

**Chapter 1
OVERVIEW****Chapter Contents**

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Chapter 1 OVERVIEW

The education of students with disabilities is firmly rooted in the constitutional guarantees involved in the “protection of vulnerable minorities.” This relationship means that the provision of services to students with disabilities is a basic civil right protected by the Constitution. Three federal laws have been passed to ensure these constitutional guarantees for individuals with disabilities:

- ▶ the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004)
- ▶ Section 504 of the Rehabilitation Act of 1973 (Section 504)
- ▶ the Americans with Disabilities Act of 1990 (ADA)

The reauthorization of the IDEA 2004 was aligned with the Elementary and Secondary Education Act of 2001—also known as the No Child Left Behind (NCLB) Act. The IDEA 2004 preserves the basic structure and civil rights of previous reauthorizations and emphasizes both *access* to education and *improved results* for students with disabilities based on data and public accountability.

This manual provides detailed information regarding district responsibilities under the IDEA 2004.

Section 1. Child Find

The district is responsible for establishing and implementing an ongoing Child Find system. Child Find activities are conducted (1) to create public awareness of special education programs, (2) to advise the public of the rights of students, and (3) to alert community residents of the need for identifying and serving students with disabilities from the age of 3 through the semester in which they turn 21.

The district is also responsible for coordinating with the Department of Health and Welfare regarding the Child Find system for children ages birth through 2 years. The Child Find system includes children with disabilities who are homeless, wards of the state, or attending private schools, regardless of the severity of the disability.

See Chapter 3 for more information on Child Find.

Section 2. Procedural Safeguards

A parent/adult student has specific procedural safeguards assured by the IDEA 2004 and state law. The district provides a document titled *Procedural Safeguards Notice* to parents/adult students that contains a full explanation of special education rights.

See Chapter 11 for more information on procedural safeguards.

Section 3. Student Eligibility under the IDEA 2004

The existence of a disability or medical diagnosis does not, by itself, mean that a student is eligible under the IDEA 2004. To be eligible for services under the IDEA 2004, a student must have a disability that:

1. meets the state disability criteria;
2. adversely affects educational and functional performance; and
3. requires specially designed instruction.

The process used to make this determination is called “eligibility evaluation.” During an eligibility evaluation, an evaluation team (which includes educators and the parent/adult student) reviews information from multiple sources including, but not limited to, general education interventions, formal and informal assessments, and progress in the general curriculum.

Section 4. Free Appropriate Public Education (FAPE)

The local education agency (district) is required to ensure that a free appropriate public education (FAPE) is available to students who reside in the district and are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

See Chapter 2 for more information on FAPE.

Section 5. District Programs and Services

The district will ensure that the same array of academic, nonacademic, and extracurricular activities and services is available to students with disabilities as is available to students without disabilities.

A. Educational Programs and Services

The district must take steps to ensure that students with disabilities have the variety of educational programs and services that are available to all other students served by the district. These may include art, music, physical education, industrial arts, consumer and homemaking

education, vocational education, and other programs in which students without disabilities participate.

B. Nonacademic and Extracurricular Services and Activities

The district must take steps to provide nonacademic and extracurricular services and activities in a manner that affords students with disabilities an equal opportunity to participate in those services and activities. This includes counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to persons with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.

Section 6. Individualized Education Program (IEP)

The IEP is a document that outlines how a particular student with a disability will receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). It is a working document that can be amended as the student's needs change. The IEP is created collaboratively by IEP team members, including parents, the student, if appropriate, the student's teachers and other district personnel.

See Chapter 5 for more information on IEP development.

Section 7. Least Restrictive Environment (LRE)

The IDEA 2004 states that, to the maximum extent appropriate, students with disabilities are to be educated with students who are nondisabled. IEP teams should consider what constitutes LRE for the individual student. This includes consideration of a continuum of placements to maximize the student's benefit from special education and related services.

See Chapter 6 for more information on LRE.

Section 8. Summary of Activities That May Lead to Special Education Services

This section describes the steps that may lead to special education services. The activities that are within each step are often sequential, but could occur simultaneously. The process might occur in a different sequence for emergency or interim placements. A flowchart of these steps is provided on page 10.

A. General Education Interventions (carried out by the problem-solving team)

The district will establish a general education problem-solving team to address student learning needs and to reduce the need to identify students as disabled. The general education problem-

solving process should include whole-school approaches, scientifically based reading programs, positive behavior supports, and early intervening and response-to-intervention systems. Accommodations and instructional interventions must be attempted during the problem-solving process before a student is referred to an evaluation team. These accommodations and interventions must be of sufficient scope and duration and must be clearly documented.

If the student shows adequate progress with general education interventions and accommodations, a referral to consider a special education evaluation may be unnecessary. However, if general education interventions and accommodations must be provided on an ongoing basis or if the student shows limited or no progress *and* the student's performance is significantly discrepant from peers, a referral to consider a special education evaluation is warranted.

See Chapter 3, Section 3B, page 21 for more information on problem-solving activities.

B. Referral to Consider a Special Education Evaluation (completed by the problem-solving team and sent to the evaluation team)

Following the problem-solving team's review of the student's response to general education interventions, if the team suspects that the student has a disability which adversely impacts his or her education, the problem-solving team must initiate a referral to consider a special education evaluation. The purpose of this referral is to bring a student to the attention of an evaluation team so that it can determine whether to conduct a special education evaluation.

A referral to consider a special education evaluation marks the point at which procedural safeguards are activated. The parent/adult student must be involved in decisions once a written referral has been made to the evaluation team to consider a special education evaluation.

The evaluation team must review existing data, including assessments and information provided by the parent/adult student, to determine the need for further assessment.

See Chapter 3, Section 4, page 22 for more information on referral to consider a special education evaluation.

C. Written Notice and Consent (completed by evaluation team)

Before administering assessments, written notice must be provided to the parent/adult student and written consent must be obtained from the parent/adult student. The district may use a single form that meets the requirements of written notice and consent for assessment. In addition, if the evaluation team needs information for an evaluation from a noneducational agency or an individual, such as a doctor, written consent for the release of information must be obtained from the parent/adult student. See Chapter 4, Section 3, page 28 and Chapter 11, Sections 3 and 4, pages 165 and 167 for more information.

D. Evaluation and Eligibility Determination (completed by evaluation team)

After receiving consent, the evaluation team must schedule assessments and ensure they are conducted. Next, the evaluation team reviews the assessment data, the response to general education interventions, and parent/adult student input and recommendations to determine whether the student is eligible for special education services. Then the evaluation team compiles an *Eligibility Report* using data collected from individual assessments and provides the parent/adult student with a copy of the report. See Chapter 4, Section 5, page 31 for more information.

If the student is not eligible, the district must provide written notice to the parent/adult student that the data does not indicate eligibility under the IDEA 2004. The district must maintain documentation in permanent records. (A student ineligible under the IDEA 2004 may be considered to have a disability under Section 504.)

If the parent/adult student disagrees with the district's evaluation, he or she has the right to an independent educational evaluation (IEE). See Chapter 11, Section 6, page 177 for more information.

E. IEP Development and Implementation (completed by IEP team)

The time between receiving consent for assessment and implementing the IEP cannot exceed 60 calendar days, excluding periods when regular school is not in session for five or more consecutive school days. The parent and district may agree in writing to extend the 60-day period.

The following activities are included in the development and implementation of the IEP:

1. Conduct an IEP team meeting to develop an IEP within 30 calendar days of a determination that the student is eligible for special education and related services. For eligible students, the IEP can be developed at the same meeting at which eligibility is determined if all required IEP team members are present and agree to proceed.
2. After determining goals and services, determine the placement in the LRE in which the IEP can be implemented. For those goals that are aligned to the alternate standards, benchmarks/objectives must be written.
3. Obtain documentation indicating participation in the IEP team meeting.
4. Obtain consent from the parent/adult student for initial placement in special education.
5. Provide copies of the IEP to the parent/adult student and other participants, as appropriate.
6. Provide written notice to the parent/adult student before implementing the IEP if the provision of FAPE or the educational placement is proposed to change.

7. Make arrangements for IEP services by informing staff of their specific responsibilities under the IEP.
8. Implement the IEP as soon as possible after it is developed.
9. Provide the parent/adult student with reports of the student's progress on IEP goals and on benchmarks/objectives, if applicable, as specified on the IEP at least as often as the parents of students without disabilities are informed of their children's progress.

See Chapter 5, Section 2, page 75 for more information on IEP development.

F. Review and Revision of IEP and Placement Decision (completed by IEP team)

1. Send the parent/adult student a *Procedural Safeguards Notice* with an invitation to attend an IEP meeting.
2. Convene an IEP team meeting under these circumstances:
 - a. when changes in the IEP are requested or if the student is not making progress; and
 - b. at least annually to review eligibility, develop a new IEP, and determine placement.
3. Provide written notice to the parent and the adult student when an IEP is amended or rewritten and when the student is no longer eligible for special education services.
4. Under Idaho regulations, the parent/adult student has the right to file a written objection to changes proposed by the district. If, within 10 calendar days of receiving written notice from the district, the parent/adult student files a written objection to all or part of the proposed IEP or placement, the district will not implement the changes to which the parent/adult student objects. See Chapter 11, Section 4F, page 169 for more information.

See Chapter 5, Section 3, page 90 for more information on IEP reviews.

G. Reevaluation (completed by evaluation team)

Reevaluation is conducted by the evaluation team. A reevaluation to determine whether a student continues to be eligible for special education services is completed as follows: (a) at least every three years, (b) when requested by the student's teacher or the parent/adult student, and (c) whenever conditions warrant. Approximately one month before conducting the reevaluation, the district must inform the parent/adult student that reevaluation is due and provide him or her with a copy of the *Procedural Safeguards Notice*. The parent/adult student and district may agree in writing that a three-year reevaluation is not necessary. In addition, a reevaluation need not be conducted more than once per year unless the district and the parents agree.

The evaluation team must include the following activities in the reevaluation process:

1. Invite the parent/adult student to participate in the review of existing data and to determine what additional data, if any, is needed as part of the reevaluation. Unless the parent/adult student requests that the evaluation team members meet as a group in a formal meeting, data can be gathered from individual team members at various times using a variety of methods.
2. Obtain written consent from the parent/adult student if additional assessments will be conducted. After gaining consent, ensure the completion of assessments and eligibility reports.
3. If the evaluation team determines that additional assessments are not needed, provide written notice to the parent and the adult student of this decision and of the parent/adult student's right to request assessments.
4. Prepare an *Eligibility Report* that details the eligibility requirements for the student, even when no new assessments are conducted. The report must address each required eligibility component.
5. Provide the parent/adult student with a copy of the *Eligibility Report*.
6. Develop and implement an IEP, if the student continues to be eligible. If the student is not eligible, follow procedures to discontinue services.

See Chapter 4, Section 6, page 36 for more information on reevaluation.

H. Discontinuation of Services

Provide prior written notice to the parent and the adult student informing them of the discontinuation of services when:

1. The evaluation team determines the student no longer meets eligibility requirements for special education services; or
2. The student meets the requirements for graduation and is awarded a regular high school diploma; or
3. The student completes the semester in which he or she reaches the age of 21 years.

When a student exits from special education as a result of earning a diploma or aging out, the district will provide the student with a summary of his or her academic achievement and functional performance, along with recommendations on how to assist the student in meeting postsecondary goals.

See Chapter 7, Section 1, page 103 for more information on the discontinuation of services.

Chart

General Education Interventions (completed by problem-solving team)

- Problem solve, plan and implement interventions and accommodations; document results.

Special Education Activities

See Chapter 14 for sample forms to complete activities.

IDEA
procedural
safeguards
are activated

60 calendar days or less

30 calendar days or less

A. Child Find Activities	
<div>IDEA procedural safeguards are activated</div> <div>60 calendar days or less</div> <div>30 calendar days or less</div>	B. Referral to Consider a Special Education Evaluation (completed by problem-solving team and evaluation team) <ul style="list-style-type: none"> ■ Problem-solving team submits a formal referral to consider special education evaluation. ■ Provide the parent/adult student with a <i>Procedural Safeguards Notice</i>. ■ Seek parent/adult student input and afford opportunity for a meeting. ■ Evaluation team decides whether to conduct further assessments.
	C. Written Notice and Consent (completed by the evaluation team) <ul style="list-style-type: none"> ■ Provide written notice to the parent/adult student. ■ Seek consent from the parent/adult student for assessments. ■ Receive written consent for assessment from the parent/adult student.
	D. Evaluation and Eligibility Determination (completed by evaluation team) <ul style="list-style-type: none"> ■ Schedule and conduct assessments. ■ Review assessment information with parent/adult student. Determine eligibility and complete the <i>Eligibility Report</i>. (Meeting with the entire team is a parent/adult student option.) ■ Provide the parent/adult student with a copy of the <i>Eligibility Report</i>.
	E. IEP Development and Implementation (completed by IEP team) <ul style="list-style-type: none"> ■ Invite the parent/adult student to the IEP team meeting. ■ Provide a <i>Procedural Safeguards Notice</i> to the parent/adult student. ■ Develop IEP and determine placement in LRE. ■ Receive consent for initial placement from the parent/adult student. ■ Provide a copy of the IEP with written notice to the parent/adult student. ■ Implement IEP.
	F. Review/Revision of IEP and Placement Decision (completed by IEP team) <ul style="list-style-type: none"> ■ Provide a <i>Procedural Safeguards Notice</i> to the parent/adult student. ■ Invite the parent/adult student to the IEP team meeting. ■ Review eligibility, develop an IEP, and determine placement annually. ■ Provide a copy of IEP with written notice to the parent/adult student.
	G. Reevaluation (completed by evaluation team) <ul style="list-style-type: none"> ■ Inform the parent/adult student that reevaluation is due. ■ Provide a <i>Procedural Safeguards Notice</i> to the parent/adult student. ■ Seek parent/adult student input on reevaluation and afford opportunity to request a meeting. ■ Receive consent from the parent/adult student for assessments if planning to assess OR Provide the parent/adult student with written notice that no further assessments will be conducted if the evaluation team determines that existing information is adequate. Inform parent/adult student of his or her right to request additional assessments. ■ Schedule and conduct assessments. ■ Review assessment information with parent/adult student. Determine eligibility and complete the <i>Eligibility Report</i>. (Meeting with the entire team is a parent/adult student option.) ■ Provide the parent/adult student with a copy of the <i>Eligibility Report</i>. ■ Go to steps in Box F or Box H.
	H. Discontinuation of Services <ul style="list-style-type: none"> ■ Provide written notice to the parent/adult student before discontinuing special education services. ■ Upon graduation provide an exit summary to the parent/adult student.

1 year or less

3 years or less

Chapter 2
FREE APPROPRIATE PUBLIC EDUCATION

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Chapter 2

Free Appropriate Public Education

The local education agency (district) is required to ensure that a free appropriate public education (FAPE) is available to students in the district and who are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the Disabilities Education Improvement Act of 2004 (IDEA 2004) means special education and related services that:

1. are provided at public expense (free);
2. are provided in conformity with an appropriately developed individualized education program, or IEP (appropriate);
3. are provided under public supervision and direction (public); and
4. include preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

Section 2. FAPE Considerations

A. District Obligation

The district is required to ensure that FAPE is available to students in the district ~~and~~ who are eligible for special education. This includes students who reside in group, personal care, or foster homes, as well as institutions, if their legal guardian is a resident of Idaho, even though the guardian may reside in another Idaho school district. It also includes students who are migratory or homeless. If a student from another state is placed in Idaho by an out-of-state agency, parent, or district, the placing district, parent, or agency is responsible for the educational costs.

The district is obligated to make FAPE available to each eligible student in the district as follows:

1. The district must provide FAPE to an individual who is at least 3 years old and who qualifies for special education services unless the parent/adult student has refused special education services.

2. The district's obligation to provide FAPE ends:
 - a. the semester in which the student turns 21 years old; or
 - b. when the student meets the district requirements that apply to all students for receipt of a regular high school diploma; or
 - c. when the student no longer meets the eligibility criteria for special education services.
3. The district is not required to provide FAPE to a qualified student who has been suspended for 10 cumulative school days or less during a school year; however, FAPE must be provided following this 10-day exception.

B. Case Law Interpretations of FAPE

The courts have further defined the term FAPE as a result of lawsuits between parents and districts. In 1982, the United States Supreme Court ruled in the case of *Hendrix Hudson Central School District Board of Education v. Rowley*. This landmark case set a standard for FAPE that is commonly referred to as the *Rowley Standard*. The *Rowley* decision defines FAPE as including these two components:

1. an IEP developed in adequate compliance with the IDEA procedures; and
2. an IEP reasonably calculated to enable the student to receive educational benefit.

The *Rowley* decision also states that, if a student is being educated in the general education classroom, the IEP should be reasonably calculated to enable the student to achieve passing marks and advance from grade to grade.

C. Applicability to Charter and Alternative Schools

Federal law requires the district to provide students with disabilities educational choices comparable to those choices offered to students without disabilities. These choices include the opportunity to attend a public charter school or alternative school. Students enrolled in public charter and alternative schools are entitled to FAPE and retain all the rights and protections that are available under the IDEA 2004.

D. Applicability to Detained Youth

Students with disabilities or suspected disabilities who are detained in city or county jails, juvenile detention centers, juvenile correctional facilities, or in Idaho prisons are entitled to FAPE.

1. Services to Youth Detained in City or County Jails

The district in which the facility is located has the responsibility for the provision of FAPE to eligible youth.

2. Services to Youth Detained in Juvenile Detention Centers (JDC)

The district in which the facility is located has the responsibility for the provision of FAPE to eligible youth. Typically, detention in a JDC is short term, and the student most likely returns to his or her home district. If a district has a student who is detained in a JDC not located within the district boundaries, the district may find it beneficial to coordinate school assignments through the JDC's education staff while the student is in the facility.

3. Services to Youth Placed in the Custody of the Department of Juvenile Corrections (DJC)

When a student is placed in the custody of the Department of Juvenile Corrections, the responsibility for the provision of FAPE resides with the Department of Juvenile Corrections.

4. Services to Youth in the Custody of the Department of Correction (DOC)

When a student is placed in the custody of the Department of Correction, the responsibility for the provision of FAPE resides with the Department of Correction through an agreement between the SDE and the Department of Correction.

E. Using Public and Private Insurance Funds to Provide FAPE

If a student is covered by a parent's private insurance, the district may access this insurance only if the parent provides informed consent. Each time the district proposes to access the private insurance, the district must obtain written parental consent and inform the parent that his or her refusal to permit the district to access the private insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost.

Chapter 3
CHILD FIND

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Chapter 3 CHILD FIND

The Child Find system involves three basic steps leading to the determination of whether or not a student has a disability and requires special education. The steps are location, identification, and evaluation. This chapter describes location and identification activities. The evaluation step is covered in Chapter 4.

Section 1. District Responsibility

The district is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students with disabilities, ages 3 through the semester they turn 21, who may need special education, regardless of the severity of the disability. The district is also responsible for coordinating with the Department of Health and Welfare (DHW) regarding the Child Find system for children ages birth through 2 years. The district may appoint an individual to coordinate the development, revision, implementation, and documentation of the Child Find system.

The Child Find system must include all students within the district's geographic boundaries including students who are:

1. enrolled in public school;
2. enrolled in charter and alternative schools;
3. enrolled in home school;
4. enrolled in private schools (including religious schools) located in the district;
5. not enrolled in school, including children ages 3 through 5;
6. advancing from grade to grade;
7. highly mobile (such as migrant and homeless students); and
8. wards of the state.

Section 2. Locating Students

Locating students who may have disabilities involves coordinating with other agencies and promoting public awareness.

A. Coordination

For infants and toddlers, birth through 2 years of age, Child Find is provided by the Idaho Infant Toddler Program. Although lead responsibility for the Infant Toddler Program has been designated to the DHW, interagency agreements provide for collaboration and coordination. The district must use local interagency agreements for efficient use of resources and ease of service accessibility for students and families.

B. Public Awareness

Annually, by November 1st, the district will take the necessary steps to ensure that district staff and the general public are informed of the following:

1. the availability of special education services;
2. a student's right to a free appropriate public education (FAPE);
3. confidentiality protections; and
4. the referral process.

This information may be provided through a variety of methods such as distributing brochures or flyers, including information in school or district publications, disseminating articles and announcements to newspapers, arranging for radio and television messages and appearances, speaking at faculty meetings or district in-services and making presentations.

Section 3. Identification

The identification component of Child Find includes screening, early intervening through a problem-solving process, and referral to consider a special education evaluation. The procedural rights under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) are afforded when the student is referred for a special education evaluation by the parent/adult student or the district.

A. Screening

Screening is an informal, although organized process, of identifying students who are not meeting or who may not be meeting appropriate educational benchmarks. A variety of methods may be used to screen students, including performance on statewide assessments, curriculum-based measures, daily work in the classroom, teacher observations, hearing and vision screeners, developmental milestones, and kindergarten readiness measures.

Although screening is an important part of the Child Find system, screening cannot be used to delay processing a referral to consider a special education evaluation where immediate action is warranted.

B. General Education Intervention (Early Intervening Services)

Early intervening services are services for students who need additional academic and behavioral support to succeed in the *general education environment*. These services will be established by a problem-solving team. It is important to remember that students who receive early intervening services—general education interventions, accommodations and strategies—have not been identified as having a disability and do not have a right to FAPE.

The general education problem-solving process should include whole-school approaches, scientifically based programs, and positive behavior supports, including accommodations and instructional interventions conducted in the general education environment. These services may also include professional development for teachers and other staff to enable such personnel to deliver scientifically based literacy instruction and/or instruction on the use of adaptive and instructional software.

Although problem-solving activities are an important part of the system, they cannot be used to delay processing a referral for consideration of a special education evaluation where immediate action is warranted.

1. Establishing a Problem-Solving Team

The district will establish a problem-solving team and a process to plan accommodations and interventions general education and to ensure that referrals to consider a special education evaluation are appropriate. Team membership is established by the school or the district and would likely involve general educators and administrators, and could include counselors, specialists, and special education personnel. When problem solving involves a preschool student, the team should seek input from child care programs, private preschools, or Head Start programs, as appropriate. While parent/adult student involvement is valuable, the district is not required to include the parent/adult student on the team.

2. Referrals to the Problem-Solving Team

Referrals to the problem-solving team may come from a variety of sources including parents, students, other family members, public or private school personnel, agencies, screening programs, or as a result of annual public notice. Referrals may be made for a variety of reasons dealing with academic and behavioral concerns and may involve, but are not limited to, teaching strategies, material accommodations, social skills training, cooperative learning concepts, classroom organization, and scheduling.

3. Interventions

- a. Interventions must be attempted in general education before a school-age student is referred to an evaluation team, unless an evaluation is needed immediately.
- b. Interventions must be of sufficient scope and duration to determine the effects on the student's educational performance and should be clearly documented.
- d. Documentation of the success or failure of accommodations and interventions must be reviewed and discussed by the problem-solving team.

4. Problem-Solving Team Decisions Following General Education Intervention

Based on a review of data and information presented by the referring party and others, the team has several decision options. In the case of a preschool student, data and information must be gathered and reviewed from such settings as child care programs, private preschools, Head Start Programs, or the home.

Following an intervention, the problem-solving team will review progress monitoring data from the intervention and other relevant information to determine what action is warranted. The team considers a variety of options, including whether to:

- a. continue the general education intervention because the student is making adequate progress but needs more time to reach goals;
- b. continue the intervention in a modified form;
- c. explore services or programs outside of special education (such as Title I of the Elementary and Secondary Education Act, including English language programs; Section 504 accommodations; counseling); and
- d. make a referral to consider a special education evaluation.

Section 4. Referral to Consider a Special Education Evaluation

A. Evaluation Team

The evaluation team is the group of people established by the IDEA 2004 that has the responsibility for making decisions regarding evaluation, assessments, and eligibility. The composition of the evaluation team will vary depending on the nature of the student's suspected disability and other relevant factors. The evaluation team must include the same membership (although not necessarily the same individuals) as the IEP team and other professionals as needed to ensure that appropriate, informed decisions are made.

Unlike an IEP team, an evaluation team has the flexibility of conducting business with or without a meeting. The case manager can gather input from evaluation team members in a variety of ways. The parent/adult student must be included in the evaluation team and must be given the opportunity to indicate whether he or she wishes the team to hold a meeting with all members attending.

B. Referrals to Consider Special Education

The procedure for handling referrals to consider a special education evaluation for students suspected of having a disability includes the following:

1. Unless immediate action is warranted, a referral to consider a special education evaluation is sent to the evaluation team *after* the problem-solving team has determined:
 - a. the student's response to research-based interventions in general education has not resulted in adequate progress; and
 - b. language and cultural issues are not the main source of the student's academic or behavioral discrepancy from peers.
2. A *Referral to Consider a Special Education Evaluation/Reevaluation* form must be completed.
3. Procedural safeguards are activated when a referral is made to consider a special education evaluation. If the referral came from someone other than the parent/adult student, the parent/adult student will be notified. In either case, the parent/adult student will be provided with a copy of the *Procedural Safeguards Notice*. At the same time, the parent/adult student will be afforded an opportunity to provide input regarding the need for and scope of the initial evaluation, including the opportunity to hold a meeting if desired.
4. The evaluation team (including the parent/adult student) reviews all available records, including family and health history, past school experiences, the results of general education interventions, and previous assessments and evaluations. The evaluation team will decide what additional assessments, if any, are needed. This review and determination process can take place at a face-to-face meeting of the evaluation team or through an alternate format, unless the parent/adult student desires that a meeting be held.
 - a. If the evaluation team determines that an evaluation is warranted, written notice must be provided to the parent/adult student and written consent must be obtained from the parent/adult student.
 - b. If the evaluation team determines that an evaluation is not warranted at this time, the team should seek other avenues for services to meet the student's needs. The

person initiating the referral, if other than the parent/adult student, may be informed as to why the evaluation is not being conducted. Written notice of the district's refusal to evaluate a student for special education services must be provided to the parent/adult student when he or she makes a referral for a special education evaluation and the district determines that the evaluation is not warranted.

Note: Districts are prohibited from requiring that a student obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation, or receiving services under the IDEA 2004.

See Chapter 4 for more information on evaluation and eligibility.

Chapter 4 EVALUATION AND ELIGIBILITY

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Chapter 4

EVALUATION AND ELIGIBILITY

Several phases are involved in establishing that a student is eligible for special education. Chapter 3 discussed procedures to locate and identify students with suspected disabilities. This chapter outlines the requirements for evaluations and assessments. It also includes the State Eligibility Criteria for special education services. Additionally:

- ▶ Evaluation teams must use the State Eligibility Criteria for *categorical* eligibility to determine eligibility unless a waiver has been approved for *noncategorical* eligibility.
- ▶ Procedures and criteria for noncategorical eligibility may be used *only* by schools that have applied for and been granted a noncategorical eligibility waiver. Noncategorical eligibility is the result of the response to intervention (RTI) process.
- ▶ The category of developmental delay (DD) is optional. If the district elects to use the DD category, it must use the 3 through 9 age range and the criteria outlined in Section 7E on page 42 of this chapter.

Except as noted above, State Eligibility Criteria must be used by all districts, even those that do not adopt this manual as their policies and procedures for special education.

Section 1. Evaluation Team

The evaluation team is a group of people established by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) with responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the individualized education program (IEP) team (although not necessarily the same individuals) and other qualified professionals as appropriate. The parent/adult student is a member of the evaluation team and must be provided an opportunity to provide input and participate in making team decisions. The evaluation team may conduct its business with or without holding a meeting. However, if requested by the parent/adult student, a team meeting will be held.

Section 2. Purpose of an Evaluation

A. Definitions

“Evaluation” and “assessment” are defined as follows:

1. **Evaluation** is a broad term that encompasses the assessment process as well as what the evaluation team does with assessment and related information within the context of identification, placement, and appropriate programming questions.

2. **Assessment** is an integral component of the evaluation process. It is the formal or informal process of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. A test is one method of obtaining credible information within the assessment process. Tests may be standardized or nonstandardized, criterion- or norm-referenced, and usually elicit responses from students to situations, questions, or problems to be solved. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal data.

B. Purpose of an Evaluation

The district will conduct a full and individual initial evaluation before the provision of special education and related services to a student with a disability. This initial evaluation will consist of procedures to determine whether:

1. the student has a disability;
2. the student's condition adversely affects educational and functional performance; and
3. the student needs specially designed instruction and related services;

In addition, the information from the evaluation can be used to consider the following:

1. the nature and extent of special education and related services needed by the student; and
2. the least restrictive environment for the student.

Section 3. Written Notice and Consent for Assessment

Written notice must be provided and informed consent must be obtained before assessments are administered to a student as part of an initial evaluation. A single form that meets the requirements of both written notice and consent can be used.

A. Written Notice Requirements

Written notice must be provided to the parent/adult student a reasonable time before the district administers assessments as part of an evaluation or reevaluation. Written notice must be in a language understandable to the general public. It must be provided in the native language or other mode of communication normally used by a parent/adult student unless it is clearly not feasible

to do so. If the native language or other mode of communication is not a written language, the district must take steps to ensure the following:

1. The notice is translated orally or by other means in the native language or other mode of communication.
2. The parent/adult student understands the content of the notice.
3. There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

The written notice must include the following:

1. a description of the evaluation or reevaluation proposed or refused by the district;
2. an explanation of why the district proposes to evaluate or reevaluate the student;
3. a description of any other options the district considered and the reasons why those options were rejected;
4. a description of each assessment procedure, test, record, or report that the district used as a basis for the proposed or refused evaluation or reevaluation;
5. a description of any other factors relevant to the evaluation or reevaluation;
6. a statement that the parent/adult student has special education rights and a description of how to obtain a copy of the *Procedural Safeguards Notice*; and
7. sources to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

See Chapter 11, Section 4, page 167 for more information on written notice.

B. Consent Requirements

Informed written consent must be obtained from the parent/adult student before the district conducts assessments as part of an initial evaluation of the student. Written consent must be sought for reevaluation that requires new assessments. Consent for assessment must not be construed as consent for special education placement.

1. Definition of Consent

Consent means that the parent/adult student:

- a. has been fully informed in his or her native language or other mode of communication of all information relevant to the assessment for which consent is sought;
- b. understands and agrees in writing (as indicated by signature) to the carrying out of the activity; and
- c. is given enough information to make informed decisions about the district's request to conduct an assessment. Information must be provided on the various types of assessments for which consent is sought.

2. Refusing Consent

The parent/adult student can refuse consent for general areas of assessment, for specific procedures, or for assessment altogether.

For an initial assessment, if consent is refused or the parent/adult student fails to respond, the student cannot be assessed. However, the district may request SDE mediation or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates that assessment is appropriate and there is no appeal, then the student may be assessed.

3. Revoking Consent

A parent/adult student who has provided consent must understand that granting consent is voluntary and may be revoked in writing at any time before the assessment. However, once the assessment has been completed, revocation of consent cannot be used to have the assessment disregarded.

See Chapter 11, Section 3, page 165 for more information on consent.

C. When Written Notice and Consent Are Not Required

Neither written notice nor consent is required for:

1. the review of existing data as part of an evaluation or reevaluation;
2. the administration a test or other assessment that is administered to all students unless consent is required of parents of all students;
3. teacher or related service provider observations, ongoing classroom evaluations, or criterion-referenced tests that are used as assessments in determining the student's progress toward goals on the IEP; and

4. screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.

Section 4. Information from Other Agencies or Districts

Consent for release of information must be received before the district seeks to obtain information about the student from other agencies. Upon receipt of consent, the case manager will send letters requesting information to individuals or agencies that have relevant information about the student. A copy of the signed consent form for release of information must be included with the letters and a copy must be retained in the student's confidential file. Sources of this additional information may include records from health and social service agencies, private preschool programs, legal service agencies, and nonschool professionals such as physicians, social workers, and psychologists.

Federal laws and regulations do not require consent for the district to:

1. request information from other districts that the student has attended; or
2. send information to other districts in which the student intends to enroll.

Section 5. Evaluation and Eligibility Determination Procedures

The time between receiving written consent for assessment and implementing the IEP cannot exceed 60 calendar days, excluding periods when regular school is not in session for five or more consecutive school days. In unusual circumstances all parties may agree in writing to an extension of the 60-day period.

The 60-day timeline will not apply to a district if:

1. The student enrolls in another district prior to the eligibility determination. In this case:
 - a. An evaluation between two school districts will be coordinated and expeditiously completed.
 - b. The receiving district must ensure a prompt completion of the evaluation, and the parent/adult student and receiving district must agree to a specific time when the evaluation will be completed.
2. The parent repeatedly fails or refuses to produce the student for an evaluation after the district has made reasonable efforts to schedule an evaluation.

A. Areas to Assess

The student must be assessed in all areas related to the suspected disability, which includes functional, developmental, and academic skills. If needed, qualified personnel must conduct an individual assessment of assistive technology needs, including a functional evaluation in the individual's customary environment. The evaluation of each student with a disability must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student may be classified. If secondary transition services are needed, appropriate assessments must be conducted.

B. Determination of Needed Initial or Reevaluation Data

As part of an initial evaluation or reevaluation, the evaluation team will review existing evaluation data on the student including:

1. assessments and information provided by the parent/adult student concerning the student;
2. data regarding the student's response to scientifically based general education interventions;
3. current classroom-based assessments and observations;
4. observations by teachers and related service providers; and
5. results from statewide and districtwide testing.

The evaluation team may conduct its review without a meeting unless the parent/adult student requests that a meeting be held. The evaluation team includes the same membership (although not necessarily the same individuals) as the IEP team and other professionals as needed to ensure that appropriate, informed decisions are made. The specific composition of the evaluation team reviewing existing data will vary depending upon the nature of the student's suspected disability and other relevant factors.

Based on that review, and input from the parent/adult student, the evaluation team will decide on a case-by-case basis what additional data, if any, is needed to determine:

1. whether the student meets or continues to meet eligibility criteria for special education;
2. the student's present levels of performance and needs in academic, developmental, and functional areas;

3. whether the student needs or continues to need special education and related services; and
4. whether any additions or adaptations and accommodations to the special education and related services are needed to enable the student (a) to meet the measurable annual goals set out in the student's IEP and (b) to participate, as appropriate, in the general education curriculum, or, for preschool students, to participate in appropriate activities.

When the evaluation team determines that additional assessments are not required for the purpose of determining whether the student meets or continues to meet eligibility criteria during an evaluation or a reevaluation, the district must provide written notice to the parent/adult student of the decision and the reasons for that decision. The parent/adult student must also be informed of his or her right to request assessments when necessary to determine eligibility.

C. Assessment Procedures and Instruments

The district must ensure, at a minimum, that the evaluation or reevaluation meets the following requirements:

1. Assessments and other materials must be selected and administered so as not to be discriminatory on a racial or cultural basis.
2. Tests and other materials must be provided and administered in the student's native language and in the form most likely to yield accurate information on what the student knows and can do academically and functionally unless it is not feasible to do so. Attempts to provide a qualified examiner in the student's native language or mode of communication must be documented.

In all direct contact with a student, the language normally used by the student in the home or learning environment must be used. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that which is normally used by the individual (e.g., sign language, Braille, or oral communication).

3. Materials used to assess a student with limited English proficiency must be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.
4. A variety of assessment tools and strategies must be used to gather relevant academic and functional information about the student, including information provided by the parent/adult student and information related to enabling the student to be involved in and progress in the general education curriculum (or, for a preschooler, to participate in appropriate activities).

5. Standardized tests must have been validated for the specific purpose for which they are being used.
6. Standardized tests must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
7. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) must be included in the *Eligibility Report*.
8. Tests and other assessment materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
9. Tests must be selected and administered so as to best ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those are the factors that the test purports to measure).
10. No single measure or assessment may be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.
11. The district must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.
12. The district must provide and use assessment tools and strategies that produce relevant information that directly assists persons in determining the educational needs of the student.
13. All services and assessments must be provided at no expense to the parent/adult student.

D. Eligibility Determination and Report

The evaluation team will consider evaluation or reevaluation findings and determine whether the student meets or continues to meet eligibility criteria. A student cannot be identified as a student with a disability if the primary reason for such a decision is (a) lack of appropriate instruction in reading, including the essential components of reading instruction as defined by the Elementary and Secondary Education Act—phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies, (b) lack of instruction in math, or (c) limited English proficiency.

If a student with a disability needs only a related service and not special education, then the student is not eligible, unless the related service is considered to be special education under state standards. Speech therapy and language therapy are considered to be special education. In interpreting evaluation data for the purpose of determining if a student is a student with a disability, the evaluation team will draw upon information from a variety of sources, including aptitude and achievement tests, parent/adult student input, teacher recommendations, physical condition, social or cultural background, adaptive behavior, and functional assessments. State Eligibility Criteria for each category of disability are provided by the State Department of Education (SDE) and must be used unless the school has a noncategorical waiver. State Eligibility Criteria can be found in Section 7 beginning on page 38 of this chapter.

Upon completing the student's evaluation or reevaluation, the evaluation team must prepare an *Eligibility Report* and provide a copy of the report to the parent/adult student. Although there is not a specific timeline established, the parent/adult student and other IEP team participants must have all the information they need to participate meaningfully in the IEP team meeting.

The *Eligibility Report* includes:

1. names and positions of all evaluation team members;
2. all data on the student as required in the State Eligibility Criteria for the area of suspected disability (see Section 7 beginning on page 38 of this chapter);
3. information about how the student's disability adversely affects his or her educational performance;
4. a description of the extent to which the assessment varied from standard conditions if the assessment was not conducted under standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration);
5. the team's decision regarding whether the student needs special education services;
6. the date of the eligibility determination; and
7. the name and position of all those administering assessments.

A copy of the *Eligibility Report* must be given to the parent/adult student.

Section 6. Reevaluation and Continuing Eligibility

To document and establish continuing eligibility in Idaho, the district must ensure that an individual reevaluation of each student with a disability is completed:

1. at least once every 3 years unless the parent/adult student and the district agree in writing that a 3-year reevaluation is not necessary. However, an updated eligibility form must be completed;
2. if the parent/adult student or the student's teacher requests a reevaluation; or
3. if conditions warrant (e.g., there is sufficient information to suspect that a significant change in a student's educational functioning has occurred and additional information is needed).

A reevaluation does not need to occur more than once per year unless the parent/adult student and the district agree otherwise. The district must also reevaluate a student with a disability before determining that the student is no longer eligible for special education, except in two circumstances:

1. reevaluation is not required if the student will meet the district requirements that apply to all students for receipt of a regular high school diploma; or
2. reach the end of the semester in which he or she turns 21 years old.

A. Informing the Parent/Adult Student

Approximately one month before the reevaluation is due, contact must be made with the parent/adult student informing him or her that:

1. the reevaluation will be occurring soon unless the district and parent/adult student agree it is unnecessary;
2. input will be sought from the parent/adult student; and
3. the reevaluation process may be accomplished without a meeting, although the parent/adult student has the option of requesting a meeting.

B. Nature and Extent of Reevaluation

Before any reassessment of the student, the evaluation team will determine the nature and extent of the student's needs by reviewing existing data. See Section 5B on page 32 of this chapter for more information.

1. No Additional Information Needed

If the evaluation team decides that no additional assessments are needed to determine whether the student continues to be a student with a disability, the district must provide

written notice to the parent/adult student of his or her right to request further assessment to determine whether the student continues to have a disability for the purpose of services under the IDEA 2004, Part B. If the parent/adult student requests an additional assessment to determine whether the student continues to have a disability under the IDEA 2004, then the district must conduct the assessment. If the parent/adult student requests an additional assessment for reasons other than eligibility, such as admission to college, then the district must consider the request and provide written notice of its decision.

2. Additional Assessments Needed

Based on recommendations from the evaluation team, the district will seek consent to administer the needed assessments. If the parent/adult student fails to respond after the district has taken reasonable measures to obtain consent for assessments as part of a reevaluation, the district may proceed with the assessments.

The district needs to document reasonable measures taken, which may include:

- a. a record of telephone calls made or attempted and the results of those calls;
- b. copies of correspondence sent to the parent/adult student and any response received; and/or
- c. detailed records of visits made to the parent's/adult student's home or place of employment and the results of those visits.

If the parent/adult student denies consent to reassess, the student cannot be assessed. However, the district may request mediation or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates the assessment is appropriate and there is no appeal, then the student may be assessed.

All reevaluation procedures must be provided at no cost to the parent/adult student.

C. Eligibility Report for Reevaluations

The evaluation team will consider evaluation findings and determine whether the student continues to have a disability.

The evaluation team is required to write an *Eligibility Report* detailing how the student meets eligibility requirements even if no new assessments were conducted. The report must address each required eligibility component and include results of previous assessments if they are being used to determine eligibility. Refer to Section 5D on page 34 of this chapter for *Eligibility Report* requirements.

Section 7. State Eligibility Criteria

The district will use the eligibility criteria and assessment procedures set forth by the SDE for placement in special education. These criteria and assessment procedures are listed as A-P in this section. Listed under each disability definition are the eligibility criteria and assessment procedures that must be used to determine whether an individual qualifies as a student with a disability in need of special education and related services.

All disabilities except Learning Disability (LD) and Developmental Delay (DD) are applicable for students 3 through 21 years of age. For Learning Disability, students must be legal kindergarten age through 21 years. Only students ages 3 through 9 can be identified in the Developmental Delay (DD) category. Use of the DD category is optional for the district. If the district elects to use the DD category, it will use the 3 through 9 age range and the criteria outlined in this chapter.

Three-Prong Test of Eligibility

To demonstrate eligibility for special education services a three-pronged test must be met: (1) the eligibility requirements established by the state for a specific disability are met; (2) the disability must have an adverse impact on the student's education, and (3) the student must need special education in order to benefit from his or her education:

Meets State Eligibility Requirements: The state eligibility requirements for specific disabilities are listed in this chapter.

Experiences Adverse Effect on Educational Performance: The term "adverse effect on educational performance" is broad in scope. An adverse effect is a harmful or unfavorable influence. Educational performance includes both academic areas (reading, math, communication, etc.) and nonacademic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.). Consideration of all facets of the student's condition that adversely affect educational performance involves determining any harmful or unfavorable influences that the disability has on the student's academic or daily life activities.

Needs Special Education: Special education is specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability. Specially designed instruction means adapted, as appropriate to meet the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the child to the general curriculum so that he or she can meet the educational standards that apply to all students.

Professional Judgment

The evaluation team may use professional judgment in determining eligibility if:

1. there is substantial and credible data from multiple sources that the student meets the definition of the disability;
2. the team demonstrates that the assessment that determines eligibility is not a valid representation of the student's functioning;
3. the disability adversely affects educational performance; and
4. the student requires special education.

A. Autism

Definition: Autism is a developmental disability, generally evident before age 3, significantly affecting verbal and nonverbal communication and social interaction, and adversely affecting educational performance. A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Characteristics vary from mild to severe as well as in the number of symptoms present. Diagnoses may include, but are not limited to, the following autism spectrum disorders: Childhood Disintegrative Disorder, Autistic Disorder, Asperger's Syndrome, or Pervasive Developmental Disorder: Not Otherwise Specified (PDD:NOS).

State Eligibility Criteria for Autism: An evaluation team will determine that a student is eligible for special education services as a student with autism when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student has a developmental disability, generally evident before age 3, that significantly affects verbal and nonverbal communication and social interaction.
3. The student is diagnosed as having a disorder in the autism spectrum by a school psychologist and a speech-language pathologist; or by a psychiatrist, a physician, or a licensed psychologist.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

B. Cognitive Impairment

Definition: Cognitive impairment is defined as significantly subaverage intellectual functioning that exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period, and adversely affect the student's educational performance.

State Eligibility Criteria for Cognitive Impairment: An evaluation team will determine that a student is eligible for special education services as a student with a cognitive impairment when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student has a full-scale intelligence quotient (IQ) of less than 70, plus or minus the standard error of measurement (at the 95 percent confidence level) of the test being used. This determination is made by a qualified psychologist using an individually administered intelligence test.
3. The student exhibits concurrent deficits in adaptive functioning expected for his or her age in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, or safety.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

Caution is advised when assessing students with cultural and language issues to prevent inappropriate identification of these students as having a cognitive impairment. When determining eligibility, tests measuring intellectual ability must be used with care; that is, only those tests designed and normed for the population being tested may be used. Tests measuring intellectual ability that are translated into another language by the examiner or an interpreter yield invalid test results and must not be used as the sole basis of the eligibility determination. Evaluation teams must consider using nonverbal tests of intellectual ability when the student is culturally or linguistically diverse.

C. Deaf-Blindness

Definition: A student with deaf-blindness demonstrates both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be appropriately educated with special education services designed solely for students with deafness or blindness.

State Eligibility Criteria for Deaf-Blindness: An evaluation team will determine that a student is eligible for special education services as a student with deaf-blindness when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student exhibits simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.
3. The student is diagnosed by an optometrist or ophthalmologist for vision loss and by an otologist, audiologist, or physician for hearing loss to make a final diagnosis as deaf-blindness.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

D. Deafness

Definition: Deafness is a hearing impairment that adversely affects educational performance and is so severe that with or without amplification the student is limited in processing linguistic information through hearing.

State Eligibility Criteria for Deafness: An evaluation team will determine that a student is eligible for special education services as a student who is deaf when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student exhibits a severe hearing impairment that hinders his or her ability to process linguistic information through hearing, with or without amplification.
3. The student has been diagnosed by an otologist, audiologist, or physician as deaf.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

E. Developmental Delay¹

Definition: The term developmental delay may be used only for students ages 3 through 9 for whom a significant delay exists in one or more of the skill areas listed in the following developmental domains:

1. cognitive domain – includes skills involving perceptual discrimination, memory, reasoning, academic skills, and conceptual development;
2. motor domain – includes skills involving coordination of both the large and small muscles of the body (i.e., gross, fine, and perceptual motor skills);
3. communication domain – includes skills involving expressive and receptive communication abilities, both verbal and nonverbal;
4. social-emotional domain – includes skills involving meaningful social interactions with adults and other children including self-expression and coping skills; or
5. adaptive domain – includes daily living skills (e.g., eating, dressing, and toileting) as well as skills involving attention and personal responsibility.

The category of developmental delay should not be used when the student clearly meets the eligibility criteria for another specific disability category.

Students cannot qualify for special education services under developmental delay beyond their 10th birthday unless they have been determined to be eligible as having a disability other than developmental delay.

State Eligibility Criteria for Developmental Delay: An evaluation team may determine that a student is eligible for special education services as a student with a developmental delay when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student is at least 3 years of age but less than 10 years of age.
3. The student has developmental and/or learning problems that are not primarily the result of limited English proficiency, cultural difference, environmental disadvantage, or economic disadvantage.

¹The category of developmental delay (DD) is optional. If the district elects to use the DD category, it will use the 3 through 9 age range and the criteria outlined here.

4. The student meets either of the following two criteria (a or b):
 - a. The student functions at least 2.0 standard deviations below the mean; or has a 30 percent delay in age equivalency; or functions at less than the 3rd percentile in one or more of the following developmental areas:
 - (1) cognitive abilities (e.g., perceptual discrimination, memory, reasoning, academic, and conceptual development);
 - (2) motor abilities (i.e., fine, gross, or perceptual motor skills);
 - (3) communication abilities including speech skills (e.g., articulation, fluency, or voice) or language skills, either receptive or expressive;
 - (4) social or emotional functioning; or
 - (5) adaptive or self-help skills.
 - b. The student functions at least 1.5 standard deviations below the mean; or has a 25 percent delay in age equivalency; or functions at less than the 7th percentile in two or more of the developmental areas listed in “a” above.
5. The student’s condition adversely affects educational performance.
6. The student needs special education.

F. Emotional Disturbance

Definition: A student with emotional disturbance has a condition exhibiting one or more of the following characteristics over a long period of time, and to a marked degree, that adversely affects his or her educational performance:

1. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. inappropriate types of behavior or feelings under normal circumstances;
4. a general pervasive mood of unhappiness or depression; or
5. a tendency to develop physical symptoms or fears associated with personal or school problems.

The term *does not* include students who are socially maladjusted unless it is determined they have an emotional disturbance. The term emotional disturbance *does* include students who are diagnosed with schizophrenia.

State Eligibility Criteria for Emotional Disturbance: An evaluation team will determine that a student is eligible for special education services as a student with emotional disturbance when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student has been documented as having an emotional condition consistent with the criteria in this chapter by one or more of the following: school psychologist, licensed psychologist, psychiatrist, physician, or certified social worker.
3. The student has been observed exhibiting one or more of the five behavioral or emotional characteristics listed in the definition of emotional disturbance.
4. The characteristic(s) has been observed:
 - a. for a long period of time (at least 6 months); and
 - b. by more than one knowledgeable observer; and
 - c. in more than one setting; and
 - d. at a level of frequency, duration, and/or intensity that is significantly different from other students' behavior in the same or similar circumstances.
5. The student's condition adversely affects educational performance in the area of academics, peer and teacher interaction, participation in class activities, and/or classroom conduct.
6. The student needs special education.

G. Health Impairment

Definition: A student classified as having a health impairment exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. These health problems may include, but are not limited to, asthma, attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis,

rheumatic fever, sickle cell anemia, and stroke to such a degree that it adversely affects the student's educational performance.

A student with ADD/ADHD may also be eligible under another category (generally learning disability or emotional disturbance) if he or she meets the criteria for that other category and needs special education and related services. All students with ADD/ADHD are not eligible to receive special education under the IDEA 2004, just as all students who have one of the other conditions listed under health impairment are not necessarily eligible.

State Eligibility Criteria for Health Impairment: An evaluation team will determine that a student is eligible for special education services as a student with a health impairment when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems.
3. The student has been diagnosed by a physician as having a health impairment. In the case of ADD/ADHD, an educational determination may be provided by a school psychologist or a licensed psychologist.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

H. Hearing Impairment

Definition: A hearing impairment is a permanent or fluctuating hearing loss that adversely affects a student's educational performance but is not included under the category of deafness.

State Eligibility Criteria for Hearing Impairment: An evaluation team will determine that a student is eligible for special education services as a student with a hearing impairment when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student does not qualify as deaf.
3. The student is diagnosed by an otologist, audiologist or physician as having a hearing impairment.

4. The student's condition adversely affects educational performance.
5. The student needs special education.

I. Learning Disability

Definition: A learning disability means a specific disorder of one or more of the basic psychological processes involved in understanding, or in using spoken or written language, that may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, which adversely affects the student's educational performance. It is not necessary to identify the specific psychological process that a student has, as long as the student meets the State Eligibility Criteria.

The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include a student who has needs that are primarily the result of visual, hearing, or motor disabilities; cognitive impairment; emotional disturbance; or environmental, cultural, or economic disadvantage.

For learning disability, students must be legal kindergarten age through the semester that they turn 21.

State Eligibility Criteria for Learning Disability: An evaluation team will determine that a student is eligible for special education services as a student with a learning disability when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. A classroom observation, which is an observation of the student's academic performance in the general education setting for the subject area of suspected disability by an evaluation team member other than the student's general education classroom teacher, has been conducted. In the case of a student not attending school, a team member must observe the student in an environment appropriate for a student of that age. The purpose of the observation is to document how the academic concern impacts the student's performance in the classroom. The observation should also document the name and title of the observer and the site, date, and duration of the observation.
3. A severe discrepancy exists between intellectual ability and academic achievement when the broad area score is equal to or greater than 15 standard points below a regressed full-scale intellectual ability score.

The district must use the Regressed Intelligence Quotient Scores table found on page 61 or another appropriate regression table or procedure. A Conversion Chart, which may be

useful in converting scores between different standard measures, is located in on pages 62-63.

4. The severe discrepancy between ability and achievement is **not** primarily the result of:
 - a. a visual, hearing, or motor impairment;
 - b. a cognitive impairment;
 - c. emotional disturbance; or
 - d. environmental, cultural, or economic disadvantage.
5. The student's disability adversely affects educational performance.
6. The student needs special education.

A district may opt out of using the severe discrepancy part of the specific learning disabilities definition and replace it by using a response-to-intervention (RTI) model of eligibility. During the 2005-2006 school year, all districts desiring to use this option must complete the Results-Based Model (RBM) training and receive an SDE waiver. This will be the only method of determining LD eligibility in Idaho as of the 2010-2011 school year. Refer to Section P beginning on page 55 for a detailed explanation of the noncategorical eligibility process.

Additional Requirements for Determining a Learning Disability: The evaluation team must prepare an *Eligibility Report*. In addition to the information required for all other disability categories, the report must answer each of the following questions:

1. Does the student have a learning disability?
2. What assessment procedures were used?
3. What relevant behavior was noted in the classroom observation as it relates to the student's academic functioning?
4. Are there any educationally relevant medical findings?
5. What effects on learning are from environmental, cultural, or economic disadvantage?
6. What severe discrepancies exist between intellectual ability and academic achievement?
7. Are special education services required for correction of, or compensation for, the disability?

8. Can the student's educational needs be met in the general education classroom? If not, why not? (Interventions must be attempted and documented before a referral for special education is made, and a record of results of interventions in the general education classroom must accompany the *Referral to Consider a Special Education Evaluation* form.)

This report must be dated and evaluation team members must certify in writing whether the report reflects each team member's conclusions. If the report does not reflect an individual team member's conclusions, that team member must submit a minority report on his or her conclusions.

J. Severe Multiple Impairments

Definition: Severe multiple impairments are two or more co-existing severe impairments, one of which usually includes a cognitive impairment. Such as cognitive impairment/blindness, cognitive impairment/orthopedic, blindness/orthopedic impairment, etc. Students with severe multiple impairments exhibit disabilities that are likely to be lifelong, significantly interfere with independent functioning, and may necessitate environmental modifications to enable the student to participate in school and society. The term does not include deaf-blindness.

A learning disability/speech impairment or language, autism/speech impairment do not constitute a multiple disability.

State Eligibility Criteria for Multiple Disabilities: An evaluation team will determine that a student is eligible for special education services as a student with multiple disabilities when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student meets eligibility criteria for cognitive impairment and another severe disability, the combination of which causes such significant educational problems that the student cannot be accommodated by special education services designed solely for one of the disabilities.
3. The student meets State Eligibility Criteria as outlined for each disability category.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

K. Orthopedic Impairment

Definition: Orthopedic impairment means a severe physical limitation that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (clubfoot, or absence of an appendage), an impairment caused by disease (poliomyelitis, bone tuberculosis, etc.), or an impairment from other causes (cerebral palsy, amputations, and fractures or burns that cause contracture).

State Eligibility Criteria for Orthopedic Impairment: An evaluation team will determine that a student is eligible for special education services as a student with an orthopedic impairment when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student exhibits a severe orthopedic impairment. The term includes congenital anomalies, impairments caused by disease, and impairments from other causes that are so severe as to require special education services.
3. The student has documentation of the condition by a physician or other qualified professional.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

L. Speech or Language Impairment: Language²

Definition: A language impairment exists when there is a disorder or delay in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems. The impairment may involve any one or a combination of the following:

1. the form of language (morphological and syntactic systems);
2. the content of language (semantic systems); and/or
3. the function of language in communication (pragmatic systems).

²A student may receive speech or language services if he or she is eligible under another disability category and needs speech or language services as a related service in order to benefit from special education.

A language disorder does not exist when language differences are due to nonstandard English or regional dialect or when the evaluator cannot rule out environmental, cultural, or economic disadvantage as primary factors causing the impairment.

State Eligibility Criteria for Language Impairment: An evaluation team will determine that a student is eligible for special education and related services as a student who has a language impairment when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. At least two procedures, at least one of which yields a standard score, are used to assess receptive language and/or expressive language.
3. The student has attained scores on a standardized measure that are 1.5 standard deviations or more below the mean, or below the 7th percentile, in either receptive or expressive language.
4. The student's disability adversely affects educational performance.
5. The student needs special education. (Speech/language therapy can be special education or a related service.)

Caution is advised when evaluating a student whose native language is other than English. The acquisition of the English language is not to be mistaken as a language impairment.

See page 66 for information on documenting adverse effects on educational performance for students with speech/language disorders.

M. Speech or Language Impairment: Speech³

The term speech impairment includes articulation/phonology disorders, voice disorders, or fluency disorders. The following eligibility criteria and minimum assessment procedures have been established for all three types of speech impairments.

M1. Articulation/Phonology Disorder

Definition: Articulation is the ability to speak distinctly and connectedly. Articulation disorders are incorrect productions of speech sounds including omissions, distortions, substitutions, and/or additions that may interfere with intelligibility. Phonology is the process used in our language

³A student may receive speech or language services if he or she is eligible under another disability category and needs speech or language services as a related service in order to benefit from special education.

that has common elements (sound patterns) that affect different sounds. Phonology disorders are errors involving phonemes, sound patterns, and the rules governing their combinations.

- a. An articulation/phonology disorder exists when:
 - (1) the disorder is exhibited by omissions, distortions, substitutions, or additions;
 - (2) the articulation interferes with communication and calls attention to itself; and
 - (3) the disorder adversely affects educational or developmental performance.
- b. An articulation/phonology disorder does not exist when:
 - (1) errors are temporary in nature or are due to temporary conditions such as dental changes;
 - (2) differences are due to culture, bilingualism or dialect, or from being non-English speaking; or
 - (3) there are delays in developing the ability to articulate only the most difficult blends of sound or consonants within the broad range for the student's age.

State Eligibility Criteria for Articulation/Phonology Disorder: An evaluation team will determine that a student is eligible for special education and related services as a student who has an articulation/phonology disorder (speech impairment) when all of the following criteria are met:

- 1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
- 2. At least two procedures are used to assess the student, one of which yields a standard score.
- 3. The student must have a score that is at least 1.5 standard deviations below the mean, or below the 7th percentile, on a standardized articulation/phonological assessment, or the speech impairment is judged as moderate on the standardized measure for students ages 3 through 21 years.
- 4. Speech intelligibility is determined to be moderately or severely impaired.
- 5. The student's disability adversely affects educational performance.
- 6. The student needs special education. (Speech/language therapy can be special education or a related service.)

M2. Fluency Disorder

Definition: A fluency disorder consists of stoppages in the flow of speech that are abnormally frequent and/or abnormally long. The stoppages usually take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

- a. A fluency disorder exists when an abnormal rate of speaking, speech, interruptions, repetitions, prolongations, blockages of airflow and/or voicing interferes with effective communication.
- b. A fluency disorder does not exist when developmental dysfluencies are part of normal speech development and do not interfere with educational or developmental performance.

State Eligibility Criteria for Fluency Disorder: An evaluation team will determine that an individual is eligible for special education and related services as a student who has a fluency disorder (speech impairment) when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student has a fluency rating of moderate or severe on the Fluency Communication Rating Scale for students age 3 through 21 years. See page 64 for the Fluency Communication Rating Scale.
3. The student's disability adversely affects educational performance.
4. The student needs special education. (Speech/language therapy can be special education or a related service.)

M3. Voice Disorder

Definition: Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

A student who has a suspected laryngeal-based voice disorder and has not been evaluated by an ear, nose, and throat physician (ENT) (otorhinolaryngologist) may not receive voice therapy services from a speech-language pathologist.

- a. A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:

- (1) interfere with communication;
 - (2) draw unfavorable attention to the speaker;
 - (3) adversely affect the speaker or listener; or
 - (4) are inappropriate to the age and gender of the speaker.
- b. A voice disorder does not exist when the vocal characteristics of quality, pitch, intensity, or resonance:
- (1) are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;
 - (2) are the result of regional dialectic or cultural differences or economic disadvantage; or
 - (3) do not interfere with educational or developmental performance.

State Eligibility Criteria for Voice Disorder: An evaluation team will determine that a student is eligible for special education and related services as a student who has a voice disorder (speech impairment) when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student has a voice production rating of moderate or severe on the Voice Rating Scale for students ages 3 through 21 years. See page 65 for the Voice Rating Scale.
3. A physician's statement documents that voice therapy is not contraindicated.
4. The student's disability adversely affects educational performance.
5. The student needs special education. (Speech/language therapy can be special education or a related service.)

N. Traumatic Brain Injury

Definition: Traumatic brain injury refers to an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor

abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

State Eligibility Criteria for Traumatic Brain Injury: An evaluation team will determine that a student is eligible for special education services as a student who has a traumatic brain injury when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student has an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both.
3. The student has documentation of diagnosis by a licensed physician as having a traumatic brain injury.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

O. Visual Impairment Including Blindness

Definition: Visual impairment refers to an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. Partial sight refers to the ability to use vision as one channel of learning if educational materials are adapted. Blindness refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials.

State Eligibility Criteria for Visual Impairment: An evaluation team will determine that a student is eligible for special education services as a student with a visual impairment when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter has been conducted.
2. The student has documentation of a visual impairment, not primarily perceptual in nature, resulting in measured acuity of 20/70 or poorer in the better eye with correction, or a visual field restriction of 20 degrees as determined by an optometrist or ophthalmologist.
3. The student's physical eye condition, even with correction, adversely affects educational performance.

4. The student needs special education.

P. Noncategorical Eligibility Process (Response to Intervention, RTI)

Only schools that have been trained and granted a noncategorical eligibility waiver from the SDE may use the following criteria.

Definition: A student eligible for special education based on noncategorical criteria has experienced significant resistance to general education interventions; demonstrates academic or behavioral performance significantly discrepant from peers; and meets all State Eligibility Criteria for Noncategorical Eligibility.

“Significant resistance to general education interventions” means that a student’s actual rate of learning or behavior change is lower than reasonably expected, despite scientifically research-based interventions that have been implemented for an adequate period (generally regarded as 9-18 weeks). Resistance to and progress toward general education interventions are some of many elements documented as part of an intervention plan.

“Intervention plan (I-plan)” refers to a plan designed by a problem-solving team to improve a student’s academic performance or behavior through general education interventions. All phases of an I-plan must be documented, including the development, implementation, and monitoring of the plan. The I-plan process takes into account the following:

1. Information about the problem is gathered from a variety of sources (e.g., prior interventions, records reviews, interviews, observations, and formal and informal assessments).
2. An I-plan is developed, implemented, monitored, and evaluated consistent with sound problem-solving methodology. All interventions must be documented and include measurable and goal-directed attempts to resolve the problem. Evidence of progress monitoring and data-based decision making must be documented.
3. The I-plan is implemented for an adequate period, generally regarded as 9-18 weeks. Interventions may be implemented in a general or nongeneral education setting or a combination of both. An intervention provided in a special education setting must not exceed the I-Plan time period or interfere with the provision of services to students with an IEP.
4. A progress monitoring graph documents interventions attempted and resulting changes in student performance.
5. Data from the I-plan is analyzed. Results are evaluated with respect to the problem and intervention activities.

State Eligibility Criteria for Noncategorical Eligibility: An evaluation team may determine that a student is eligible for special education services when all of the following criteria are met:

1. An evaluation that meets the criteria of Section 5 on pages 31-35 of this chapter, including relevant behavioral observations, has been conducted.
2. Data analyzed from an I-plan indicates significant resistance to reasonable general education interventions. The I-plan, which includes the progress monitoring graph, demonstrates progress monitoring and intervention changes and must be attached to the *Eligibility Report*.
3. At the end of the I-plan period, a severe discrepancy between the performance of the student and his or her peers is indicated by at least two of the following:
 - a. The student's median score on a curriculum-based measurement (CBM) is at or below a percentile norm as follows:
 - (1) The CBM score is at or below the 16th percentile on material one grade level below the student's current grade placement; or
 - (2) The CBM score is at or below the 7th percentile on material within the student's current grade placement.

The evaluation team must identify the type of norm being applied, i.e., school, district, regional or national norm.

- b. The student's score on a nationally normed standardized test is at least 1.75 standard deviations below the mean (a standard score of 74 or lower).
 - c. The student's median performance is below that of his or her grade-placement peers by a discrepancy ratio of at least 2.0. The discrepancy ratio is calculated by dividing the peers' median performance by the target student's median performance.

Note: Caution should be exercised when applying this criterion to both very young students (kindergarten and 1st grade) and older students (7th grade and above). For example, a 2.0 discrepancy ratio may not be meaningful for a kindergarten student reading 4 words per minute compared to a peer median of 8 words per minute. Likewise, a 1.6 discrepancy ratio may indicate a severe discrepancy for a 9th grade student reading 120 words per minute compared to a peer median of 200 words per minute.

- d. The student's instructional performance is at least two grade levels below his or her current grade placement.

4. The student's condition adversely affects educational performance.
5. The student needs special education.

Documents

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REGRESSED INTELLIGENCE QUOTIENT SCORES

Instructions:

A conversion table to regress intelligence quotient (IQ) scores is located on the following pages. The table has 4 columns. Column 1 indicates full-scale IQ scores. Columns 2-4 indicate corresponding correlation scores. Follow the instructions below to determine the regressed IQ score to be used in determining whether the 15-point discrepancy between ability and achievement exists.

1. Determine the correlation between the intellectual measure and the achievement measure that was used to assess the student. Correlations are usually stated in the instructor's manual for each test.
2. Determine the appropriate column (2, 3, or 4) to use based on the correlation between the two tests. The table provides correlations at .7, .6, and .5. Use .6 if you cannot find the correlation in the instructor's manual or test literature.
3. Locate the student's full-scale IQ score on the intellectual measure in column 1 of the table.
4. Follow the IQ score across to a correlation score in the appropriate column. That score is the regressed IQ score.
5. Subtract the student's actual achievement standard score from the regressed IQ score.

Example:

If the correlation between the IQ test and the achievement test is .6 and the student's full-scale score is 86, the student's regressed IQ score would be 92.

Regressed full-scale IQ score	92
Minus achievement standard score	-75
Equals discrepancy	17

Conversion Table to Regress IQ Scores

Full-Scale IQ Score	Correlation between full-scale IQ score and achievement scores		
	.7 Correlation	.6 Correlation	.5 Correlation
150	135	130	125
149	134	129	125
148	134	129	124
147	133	128	124
146	132	128	123
145	132	127	123
144	131	126	122
143	130	126	122
142	129	125	121
141	129	125	121
140	128	124	120
139	127	123	120
138	127	123	119
137	126	122	119
136	125	122	118
135	125	121	118
134	124	120	117
133	123	120	117
132	122	119	116
131	122	119	116
130	121	118	115
129	120	117	115
128	120	117	114
127	119	116	114
126	118	116	113
125	118	115	113
124	117	114	112
123	116	114	112
122	115	113	111
121	115	113	111
120	114	112	110
119	113	111	110
118	113	111	109
117	112	110	109
116	111	110	108
115	111	109	108
114	110	108	107
113	109	108	107
112	108	107	106

Full-Scale IQ Score	.7 Correlation	.6 Correlation	.5 Correlation
111	108	107	106
110	107	106	105
109	106	105	105
108	106	105	104
107	105	104	104
106	104	104	103
105	104	103	103
104	103	102	102
103	102	102	102
102	101	101	101
101	101	101	101
100	100	100	100
99	99	99	100
98	99	99	99
97	98	98	99
96	97	98	98
95	97	97	98
94	96	96	97
93	96	96	97
92	94	95	96
91	94	95	96
90	93	94	95
89	92	93	95
88	92	93	94
87	91	92	94
86	90	92	93
85	89	91	93
84	89	90	92
83	88	90	92
82	87	89	91
81	87	89	91
80	86	88	90
79	85	87	90
78	85	87	89
77	84	86	89
76	83	86	88
75	83	85	88
74	82	84	87
73	81	84	87
72	80	83	86
71	80	83	86
70	79	82	85

FLUENCY COMMUNICATION RATING SCALE

Student: _____

School: _____ Date: _____

	Nondisabling Condition	Mild	Moderate	Severe
Frequency	Frequency of dysfluent behavior is within normal limits for student's age, gender, and speaking situation and/or less than 1 stuttered word per minute.	Transitory dysfluencies are observed in specific speaking situation(s) and/or 1-2 stuttered words per minute.	Frequent dysfluent behaviors are observed in specific speaking situations(s) and/or 4-10 stuttered words per minute.	Habitual dysfluent behaviors are observed in a majority of speaking situations and/or more than 10 stuttered words per minute.
Descriptive Assessment	Speech flow and time patterning are within normal limits. Developmental dysfluencies may be present.	Rate of speech interferes with intelligibility. Sound, syllable, and/or word repetitions or prolongations are present with no other secondary symptoms. Fluent speech periods predominate.	Rate of speech interferes with intelligibility. Sound, syllable, and/or prolongations are present. Secondary symptoms including blocking, avoidance, and physical concomitants may be observed.	Rate of speech interferes with intelligibility, sound, syllable, and/or word repetitions and/or prolongations are present. Secondary symptoms predominate. Avoidance and frustration behaviors are observed.
<p>Comments:</p>				

VOICE RATING SCALE

Student: _____ School: _____ Date: _____

	Nondisabling Condition	Mild Descriptive	Moderate Descriptive	Severe Wilson Voice Profile Scale
Pitch	Pitch is within normal limits.	There is a noticeable difference in pitch that may be intermittent.	There is a persistent, noticeable inappropriate raising or lowering of pitch for age and gender, or evidence of dysphonia.	+3 Pitch -3 Pitch -2 Pitch +2 Pitch
Intensity	Intensity is within normal limits.	There is a noticeable difference in intensity that may be intermittent.	There is a persistent, noticeable inappropriate increase or decrease in the intensity of speech, or the presence of aphonia.	-3 Intensity +2 Intensity -2 Intensity
Quality	Quality is within normal limits.	There is a noticeable difference in quality that may be intermittent.	There is a persistent, noticeable breathiness, glottal fry, harshness, hoarseness, tenseness, strident, or other abnormal vocal quality.	-2 Laryngeal +3 Laryngeal +2 Laryngeal -3 Laryngeal
Resonance	Nasality is within normal limits.	There is a noticeable difference in nasality that may be intermittent.	There is a persistent noticeable cul-de-sac, hyper- or hypo-nasality, or mixed nasality.	-2 Resonance +3 Resonance +4 Resonance
Description of Current Physical Condition	No consistent laryngeal pathology; physical factors influencing quality, resonance, or pitch, if present at all, are temporary and may include allergies, colds, or abnormal tonsils and adenoids.	Laryngeal pathology may be present. Physical factors indicated in moderate and/or severe levels may be present.	Probable presence of laryngeal pathology. Physical factors may include nodules, polyps, ulcers, edema, partial paralysis of vocal folds, palatal insufficiency, enlarged/insufficient tonsils and/or adenoids, neuromotor involvement, or hearing impairment.	Physical factors may include: - unilateral or bilateral paralysis of vocal folds - laryngectomy - psychosomatic disorders - neuromotor involvement of larynx muscles, i.e., cerebral palsy
Comments:				

DOCUMENTATION OF ADVERSE EFFECTS ON EDUCATIONAL PERFORMANCE FOR STUDENTS WITH SPEECH/LANGUAGE DISORDERS

Documentation of adverse effects on educational performance can be gathered from a thorough assessment of communication skills. The assessment must include student, parent, and teacher input.

Information must be recorded by the speech-language pathologist (SLP) on the *Eligibility Report* form.

An assessment of a student's ability to communicate, rather than isolated skill assessment, will provide information on how the impairment affects the student overall. The following errors and problems should be considered when determining how the student's ability to communicate may adversely affect educational performance:

1. Sound errors, voice quality, or fluency disorders inhibit the student from reading orally in class, speaking in front of the class, or being understood by teachers, peers, or family members.
2. Sound errors, voice quality, or fluency disorders embarrass the student. Peer relationships suffer as a result, or peers may make fun of the student.
3. Sound errors cause the student to make phonetic errors in spelling or have difficulty in phonics.
4. Grammatical errors create problems with a student's orientation in time.
5. Morphological errors inhibit the student from using or making complete sentences.
6. Semantic problems slow the student's ability to follow directions, give directions, make wants and needs known, make oneself understood, relate information to others, or fully participate in daily living.

Chapter 5
INDIVIDUALIZED EDUCATION PROGRAMS

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Chapter 5

INDIVIDUALIZED EDUCATION PROGRAMS

Special education is defined as specially designed instruction, based on peer-reviewed research to the extent possible, to meet the unique needs of a student with a disability including instruction in the classroom, the home, hospitals, institutions, and other settings. The definition of special education also includes instruction in physical education, speech/language therapy, transition services, travel training, assistive technology services, and vocational education. Specially designed instruction means adapting the content, methodology, or delivery of instruction to (1) address the unique needs of the student that result from his or her disability and (2) ensure access to the general education curriculum so that the student can meet the education standards that apply to all students. Under this definition of special education a student must have a disability under the Individuals with Disabilities Improvement Education Act of 2004 (IDEA 2004) which adversely affects educational performance and *need* special education.

The need for special education and related services is documented in each student's individualized education program (IEP). The IEP is the product of collaboration among a parent/adult student and educators who, through full and equal participation, identify the unique needs of a student with a disability and plan the special education services to meet those needs. In developing each student's IEP, the IEP team will consider:

- ▶ The strengths of the student;
- ▶ The concerns of the parents for enhancing the education of their child;
- ▶ The results of the initial or most recent evaluation of the student; and
- ▶ The academic and functional needs of the student.

Section 1. IEP Initiation

A. Purpose of Meeting

The primary purpose of an IEP team meeting is to design an IEP that will meet the unique needs of a student with a disability. The IEP team plans the special education and related services calculated to enable the student to receive educational benefits. The parent/adult student must be invited to the meeting and be informed regarding his or her role as a team member to participate meaningfully. The parent/adult student, district personnel, and other IEP team members should come prepared to discuss specific information about the student's individual needs and the type of services to be provided to address those needs.

The meeting format should invite open discussion that allows participants to identify and consider all the relevant needs of the student. Placement decisions must be considered *after* the

special education services are determined. Placement is based on the IEP services and accommodation needs and may not be the determining factor in developing the IEP contents.

Informal or unscheduled conversations involving district personnel on various issues (e.g., teaching methodology, lesson plans, or coordination of service provisions) are not considered a meeting as long as no decisions are made regarding issues addressed on the student's IEP. A meeting does not include preparatory activities that district personnel engage in to develop a proposal or a response to a parent/adult student proposal that will be discussed at a later meeting.

B. Team Decision Making

The IEP meeting serves as a communication vehicle between the parent/adult student and district personnel that enables them, as equal participants, to make joint, informed decisions regarding the student's special education services. All members of the IEP team are expected to work toward consensus regarding what services will be outlined in the student's IEP to ensure that he or she receives a free appropriate public education (FAPE). Consensus means that all members are in general agreement regarding what is written.

If there is a lack of consensus between the parent/adult student and other IEP team members regarding an IEP decision, then school personnel on the IEP team should seek consensus and make the decision subject to the due process rights of the parent/adult student. If there is a lack of consensus among school personnel, then the district representative on the IEP team must make the decision. Any team member who does not agree with the IEP team decision regarding the student's educational program may place a minority report in the student's file. A minority report does not prevent implementation of the IEP team's decision.

The district will follow the procedures in Section 1J, "Parent/Adult Student Objection to the IEP," on page 88 if necessary.

C. When IEP Meetings Are Needed or Are Optional

An IEP meeting must be held for one or more of the following reasons:

1. To develop and implement an IEP within 60 calendar days of receiving parent/adult student consent to evaluate, excluding periods when regular school is not in session for 5 or more consecutive days. The parent/adult student and the district may agree in writing to extend the 60-day period. However, the IEP must be implemented as soon as possible following the meeting during which the IEP was developed.
2. To review the IEP periodically, but no longer than 365 days from the date of development of the current IEP. An IEP must be in effect at the beginning of each school year;
3. When another agency fails to deliver transition or other services outlined in the IEP;

4. At the reasonable request of any member of the IEP team;
5. To review behavioral intervention strategies and/or develop a behavioral plan as part of the IEP; or
6. To address the IDEA 2004 discipline requirements (see Chapter 13 beginning on page 213).

Note: Under the IDEA 2004, an IEP team meeting is not required to amend the IEP. The parent/adult student and district may agree not to convene an IEP meeting for the purposes of making such changes and may develop a written document to amend the student's current IEP. At the parent's/adult student's request the district must prepare a new IEP with the revisions incorporated. The school must provide the parent/adult student with the amendment to the IEP or a copy of the revised IEP.

D. IEP Team Members and Roles

Role	Description
Parent of the student <i>or</i> Adult Student if rights have transferred	<p>The term "parent" refers to a natural or adoptive parent, a legal guardian, a person acting as a parent, or a surrogate parent who has been appointed by the district. The term "acting as a parent" includes persons such as a grandparent or stepparent with whom the student lives as well as persons who are legally responsible for a student's welfare. The term does not include state agency personnel if the student is a ward of the state. A foster parent may act as a parent if the natural parent's authority to make educational decisions on behalf of his or her child has been terminated by law. A foster parent must be an individual who has been residing with the student at least 6 months, is willing to make educational decisions required of a parent, and has no interest that would conflict with the interests of the student.</p> <p>An "adult student" is a student with a disability who is 18 years of age or older to whom special education rights have transferred under the IDEA 2004 and Idaho Code. (See Chapter 11, Section 2C, page 162 for more information.) In this case, the parent may attend the IEP meeting as an individual who has knowledge or special expertise regarding the student at the invitation of the adult student or the district.</p>

Role	Description
District Representative (Cannot be waived—a representative must be present to discuss curriculum and resources.)	The district representative or designee must be qualified to provide or supervise the provision of special education to meet the unique needs of students with disabilities. The representative must be knowledgeable about the general education curriculum and about the availability of resources in the district. He or she must have the authority to allocate resources to ensure that whatever services are set out in the IEP will be provided. The district representative must participate in IEP meetings. Examples of the district representative include the building principal, the special education director, the district superintendent and others who meet the criteria described above. The district representative may be another member of the IEP team if all the criteria are met.
Special Education Teacher/Provider—at least one	This individual will generally be the student's special education teacher or service provider who is responsible for implementing the student's IEP. In the case of a student receiving services from a speech-language pathologist, but not a special education teacher, it would be more appropriate for the speech-language pathologist to fill this role on the IEP team.
General Education Teacher—at least one	A general education teacher of the student is required to participate in developing the IEP if a student is, or may be, participating in the general education environment. For preschool-age students, the general education teacher may be the kindergarten teacher or another appropriate designee. Other designees at the preschool level may include a care provider, Head Start teacher, or community preschool teacher who meets state and/or national licensing standards.
Individual who can interpret evaluation results and implications	This person may be someone who participated in the evaluation of the student. He or she must be able to explain the results, the instructional implications, and the recommendations of the evaluation. This person may also fill the role of district representative, special education teacher, or general education teacher.
Student	Beginning no later than the year the student turns 16 years old, a secondary student must be invited by the district to attend any IEP meeting at which transition is to be discussed. However, any student should be invited to participate in an IEP meeting when appropriate.

Role	Description
Representative of a Private School (if applicable)	If a student is enrolled in or referred to a private school, the district must ensure that a representative of the private school is invited to the IEP meeting. If a representative cannot attend, the district must use other methods to ensure participation by the private school, including individual or conference telephone calls.
Representative of Transition Agency(s)	If transition services are being discussed, a representative of any public agency that is likely to be responsible for providing or paying for transition services must be invited. If a representative does not attend, steps must be taken to obtain participation from the agency in transition planning.
Part C Coordinator or Representative	At the request of the parent of a student who previously was served under Part C, the Part C coordinator or other representative of the Part C system will be invited to the initial IEP meeting.
Other	At the discretion of the parent/adult student or the district, other individuals who have knowledge or special expertise regarding the student, including related service personnel, may be included as IEP team members. The determination of having knowledge and special expertise regarding the student will be made by the parent/adult student or district person who invited the individual to be a member of the IEP team.

Note: Members of the IEP team may be excused from an IEP meeting if the parent/adult student and district agree to this in writing. If the meeting deals with the excused member's areas, he or she must provide written input to the IEP team prior to the meeting.

E. The General Educator's Role in IEP Development

If a student is participating in the general education curriculum or environment, at least one of the student's general education teachers who is responsible for implementing any portion of the IEP must participate in developing the IEP.

The general education teacher's role in the development, review, and revision of the IEP includes:

1. discussion of the student's involvement and progress in the general education curriculum;
2. determination of appropriate positive behavioral interventions and strategies for the student; and

3. determination of supplementary aids and services, program accommodations/adaptations, and supports for school personnel.

Each general education teacher who is responsible for implementing any portion of the IEP must have access to the IEP and be informed of his or her specific responsibilities. This includes being informed of any specific accommodations, adaptations, and supports that must be provided to the student in the general education classroom and curriculum to ensure that the IEP is implemented appropriately.

F. Invitation to IEP Team Meetings

To the extent possible, the district should encourage the consolidation of all IEP team meetings, including meetings that may involve eligibility, reevaluation and IEP development.

The district must do the following:

1. Schedule the meeting at a place and time mutually agreed on by the parent/adult student and the district.
2. Invite the parent/adult student to the meeting early enough to ensure that he or she can attend. The district must keep a record of this invitation. The invitation must include the following:
 - a. the purpose, time, and location of the meeting;
 - b. who will attend the meeting; and
 - c. information regarding the parent's/adult student's right to bring other people to the meeting.

The invitation should clarify the parent's/adult student's role on the team and request that he or she come prepared to discuss the unique needs and characteristics of the student, the types of services that may be needed, and the goals that would indicate the success of the services.

3. Invite the student, if appropriate or required, to attend and participate in his or her IEP team meeting. If a purpose of the meeting is to consider transition, and the student does not attend, the district must take other steps to ensure that the student's preferences and interests are considered.
4. The invitation may be either written or oral. In either case, the district must document that all the required components noted in item 2 above were included in the invitation. In addition, the parent/adult student must be provided with a copy of the *Procedural*

Safeguards Notice once annually, preferably at the annual review. (See pages 183-200 for a copy of the *Procedural Safeguards Notice*.)

5. When one of the purposes of the IEP team meeting is to consider transition services, the invitation must also:
 - a. indicate this purpose;
 - b. indicate that the district will invite the student; and
 - c. identify any other agency that will be invited to send a representative.
6. The district must take appropriate action to ensure that a parent/adult student understands the proceedings at an IEP team meeting, including arranging for an interpreter for a parent/adult student who has a hearing impairment or whose native language is other than English.
7. The IEP team may meet without the parent/adult student if he or she cannot attend the meeting. However, the district must document its attempts to arrange a mutually agreed upon time and place for the meeting. Documentation could include records of telephone calls or conversations, copies of correspondence sent to the parent/adult student and any responses received, and detailed records of any visits made to the parent/adult student. If a meeting is held without the parent/adult student, the district must offer and document alternative methods, such as conference calls, to gain his or her participation in the development of the IEP.
8. Alternatives to physical meetings such as video and telephone conferencing may take the place of physical IEP meetings if the parent/adult student and district agree.

Section 2. IEP Development

A. General Demographic Components for All IEPs

All IEPs must include the date of the IEP meeting and the following general demographic components: the student's name as it appears in school records, native language, birth date, and identification number (for state reporting or Medicaid purposes only), names of parents, address, phone number, school, and grade.

B. Documentation of Participants

The district must ensure the attendance and participation of the IEP team members at the IEP meeting. Documentation of attendance can be accomplished by listing team members on the IEP and checking their attendance status.

The attendance list is not a reflection of agreement or disagreement with the IEP, only an indication of attendance. As with any team member, the parent's/adult student's name on the list does not indicate agreement or disagreement with the IEP contents. If the parent/adult student disagrees with all or part of the IEP, the district should remind the parent/adult student that he or she may file a written objection.

(See Section 1J on page 88 for additional information on parent/adult student objections.)

C. Present Levels of Performance, Goals, and Benchmarks/Objectives

The IEP identifies present levels of academic and functional performance and *measurable* goals that enable the IEP team to track the effectiveness of services and to easily report progress toward goals.

1. Statements of present levels of academic and functional performance in an area of need include:
 - a. How a school-age student's disability affects his or her involvement and progress in the general education curriculum, i.e., the same curriculum used by students without disabilities.
 - b. For preschool students, present levels of performance should reference the Idaho Early Learning Standards and describe how the disability affects the student's participation in appropriate activities.
2. Although the content of present levels of performance statements are different for each student, each statement must:
 - a. be written in an objective, measurable terms and easy-to-understand nontechnical language);
 - b. show a direct relationship with the other components of the IEP, including special education services, annual goals, and, if applicable, benchmarks/objectives for students who participate in an Idaho Alternate Assessment;
 - c. provide a starting point for goal development; and
 - d. reference general education standards.
3. Measurable academic and functional annual goals must be related to the needs described in the present levels of performance statements.

- a. A goal is a written, measurable statement that describes what a student is reasonably expected to accomplish from the special education program within the time period covered by the IEP, generally one year.
 - b. Goals are written to enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability.
 - c. A goal must include the behavior, the performance criteria, and the evaluation procedure.
4. For students taking an Idaho Alternate Assessment, which are aligned to the alternate standards, each goal *must* have at least two benchmarks/objectives. Benchmarks/objectives must include a statement of how far the student is expected to progress toward the annual goal and by what date. The district has the discretion to use benchmarks as described in this paragraph for all students eligible for IEP services.

D. Progress Toward Goals

The IEP must include a statement describing:

1. how the student's progress toward IEP goals will be measured;
2. how the parent/adult student will be informed of the student's progress toward the annual goals, including the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the IEP time period.

Progress reports concurrent with the issuance of report cards will be provided.

E. Statements of Special Education and Related Services

Each student's IEP must describe the special education and related services that will be provided to or on behalf of the student. Special education includes specially designed instruction to meet the unique needs of the student.

The term "related services" refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education as described in the IEP. These services include, but are not limited to:

- ▶ audiology
- ▶ speech therapy
- ▶ language therapy
- ▶ psychological services
- ▶ physical therapy

- ▶ occupational therapy
- ▶ therapeutic recreation,
- ▶ early identification and assessment of students' disabilities
- ▶ rehabilitation counseling services
- ▶ orientation and mobility services
- ▶ medical services for diagnostic or evaluative purposes
- ▶ school nurse services
- ▶ social work services in school
- ▶ supports for school staff
- ▶ parent counseling and training. Parent counseling and training includes helping a parent (a) understand child development and the special needs of his or her child and (b) acquire skills to support the implementation of his or her child's IEP.

This list of related services is not exhaustive and may include other developmental, corrective, or supportive services, transition services or assistive technology. **EXCEPTION:** The term does not include a medical device that is surgically implanted or the replacement of such device.

Services may also include general education curriculum accommodations and/or adaptations, support for school staff, extended school year services, transportation, transition services, assistive technology services, and travel training. Services must be provided whether or not the district currently has these services in place.

Although services may be of benefit to a student with a disability, all of the services listed above may not be required for each individual student. Related services are the responsibility of the district only if the IEP team determines they are required to assist the student to benefit from special education. Further, the student is not entitled to related services if (a) he or she does not *need* special education or (b) the parent/adult student does not consent to special education services.

The description of services in the IEP must:

1. Identify the program accommodations and supplementary aids to be provided to the student in the areas of need. These may include, but are not limited to, general education accommodations/adaptations, positive behavioral intervention plans, and assistive technology devices.
2. List the specific services that will meet the unique needs of the student, allowing him or her to advance appropriately toward attaining the annual goals:
 - a. to be involved in and make progress in the general education curriculum;
 - b. to participate in extracurricular and other nonacademic activities; and

- c. to be educated and participate with other students with disabilities and with students without disabilities to the maximum extent appropriate.
3. State the projected starting date and expected duration of the services and accommodations/adaptations.
4. List the anticipated time per session and frequency of sessions per week or month. The amount of service may not be stated as a range.
5. State the location where services and accommodations/adaptations will be provided.

F. Other IEP Considerations

Based on the unique needs of each student, the IEP team should consider any of the following services that may be appropriate for the student and should document such services on the IEP accordingly:

1. Supplementary Aids and Services

“Supplementary aids and services” means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students with disabilities to be educated with students without disabilities to the maximum extent appropriate in accordance with LRE requirements.

The determination of which supplementary aids and services are appropriate for a particular student must be made on an individual basis. Supplementary aids and services may include the following: assistance of an itinerant special education teacher, related service provider, or paraprofessional; support or training for the general educator; use of resource services; provision of note takers; supports for extracurricular or other nonacademic activities; and supports for participation in statewide or districtwide achievement testing.

2. Accommodations and Adaptations

Accommodations and adaptations include any changes that allow students with disabilities the same opportunity as students without disabilities to participate in and benefit from the educational program, activities, and services of the district.

Accommodations are intended to make educational opportunities more accessible. This may involve the setting, communication modality, equipment, and/or supplemental aids and services. Examples include Braille editions, large print, pencil grips, tape recorders, note takers, and computers with spell check.

Adaptations are changes in educational expectations for the student with a disability compared to peers without disabilities. These adaptations include actual changes in the general education curriculum and instruction or the use of an alternative or supplemental curriculum. Examples include fewer concepts to be mastered, different test questions, and material at a different reading level.

Whenever the IEP team determines that accommodations and/or adaptations are needed to ensure academic progress, they must be indicated in the IEP. Any accommodations and/or adaptations required in physical education, vocational education, and statewide or districtwide assessments must also be noted in the IEP.

3. Assistive Technology Devices and/or Services

The district will ensure that assistive technology devices and/or services are made available to a student, if required, as special education, related services, or supplementary aids and services. The following points are definitions and clarifications of terms:

- a. “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a device that is surgically implanted or the replacement of such device.

The district must permit the student to use school-purchased assistive technology devices at home and in other settings if the IEP team determines that the student needs access to these devices in nonschool settings to receive FAPE. An example of this would be to complete homework. The district may hold a parent/adult student liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the district if it is lost, stolen, or damaged because of negligence or misuse at home or in another setting outside of school time.

Assistive technology devices should be designed using “universal design” principles. The term “universal design” means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities. This includes products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

- b. “Assistive technology service” means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:
 - (1) an evaluation of the student’s assistive technology needs, including a functional assessment in the student’s customary environment;
 - (2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
 - (3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
 - (4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 - (5) training or technical assistance for a student with a disability or, if appropriate, that student’s family; and
 - (6) training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services or are otherwise substantially involved in the major life functions of a student with a disability.
- c. The district must ensure that the hearing aids worn by deaf or hard-of-hearing students in school are functioning properly.

4. Extended School Year Services

The district will provide extended school year (ESY) services for students with disabilities who qualify for such services. The ESY programs for eligible students must meet the requirements of FAPE. The student’s educational program is based on individual needs and is not determined by what programs are readily available within the district. The student cannot be required to fail, or to go for an entire school year without ESY services, simply to prove a need. The IEP team must consider the following in the development and provision of an ESY program:

- a. The term “extended school year services” means special education and/or related services that are provided beyond the regular school year:
 - (1) to a student with a disability;
 - (2) in accordance with the student’s IEP; and

- (3) at no cost to the parent/adult student.

The goal of ESY services is to assist students with disabilities with the emergence and maintenance of specific IEP goals learned the school year preceding the ESY. These may include goals related to independence, behavior, socialization, communication, and academics. The ESY services for special education students provide a different focus from general summer school programs.

- b. The ESY services must be considered in light of the totality of the circumstances, including the following:
 - (1) **Emerging skill:** Few, if any, gains are made during the regular school year. A skill is in the process of emerging, and the IEP team believes that with ESY services the student would make reasonable gains; or
 - (2) **Regression-Recoupment:** The student would regress to such an extent and the amount of time required to relearn a skill or behavior becomes so significant that the student would be unable to benefit from his or her special education; or
 - (3) **Self-Sufficiency:** An interruption in services would threaten the acquisition of critical life skills that aid in the student's ability to function as independently as possible, thereby continuing the student's reliance on caretakers, including institutionalized care. Critical life skills relate to those skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance the student's integration with individuals without disabilities. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.
- c. Decisions concerning ESY services must be based on collected data and written documentation. Types of data and information may include, but are not limited to, the following:
 - (1) **Criterion-referenced test data:** Consider daily/weekly probes or pre-test/post-test data.
 - (2) **Norm-referenced test data:** Consider pre-test/post-test data.
 - (3) **Anecdotal records:** Consider information collected throughout the school year.
 - (4) **Physical, mental, or emotional health factors:** Consider the educational, medical, and psychological records of the student as well as the prognosis or

judgments of educators, medical personnel, parents, and others that work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.

- (5) **History:** Consider evidence of past regression or past ESY services. The IEP team should not automatically assume that a student who has received ESY services in the past will be eligible for ESY services in the future, but it is a factor to consider.
 - (6) **Data on observed performance:** Consider data maintained on the student concerning performance observed in the classroom, during community-based activities, and as part of IEP progress monitoring.
 - (7) **Teacher interviews and recommendations:** Consider progress reports by teachers, therapists, and others who have direct contact with the student before and after breaks in educational programming.
 - (8) **Parent/adult student input:** Consider parent observations of the student as well as parent/adult student requests for ESY services.
- d. The ESY services must be clearly delineated in an IEP. The district can meet this requirement by amending the current IEP using an amendment form or by developing a complete ESY IEP. Both approaches require an IEP team meeting and written notice to the parent/adult student. The parent/adult student may agree in writing to amend the IEP without a face-to-face IEP meeting. See Section 1C on page 70 of this chapter for more information.
 - e. The district may not limit ESY services to particular categories of disability or unilaterally limit the amount or duration of these services.

5. Transportation

Transportation is a related service if special arrangements are required to assist a student with a disability to benefit from special education. The student's individual needs concerning his or her education are the main considerations in determining services—this includes transportation services.

The IEP team must consider how the student's disability affects his or her need for transportation, including determining whether the student's disability prevents the student from using the same transportation provided to students without disabilities, or from getting to school in the same manner as students without disabilities. This includes transporting a preschool-age student to the site at which the district provides special education and related services to the student, if that site is different from the site at which the student receives other preschool or day-care services.

When the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA 2004 must be afforded to the student in matters concerning transportation.

Transportation needs may include, but are not limited to, the following:

- a. travel to and from school and between schools to access special education;
- b. travel in and around school buildings;
- c. specialized equipment including lifts and ramps, if required to provide special transportation;
- d. other services that support the student's use of transportation, such as:
 - (1) special assistance (e.g., an aide on the bus and assistance getting on and off the bus);
 - (2) safety restraints, wheelchair restraints, and child safety seats;
 - (3) accommodations (e.g., preferential seating, a positive behavioral support plan for the student on the bus, and altering the bus route); or
 - (4) training for the bus driver regarding the student's disability or special health-related needs.

6. Special Considerations

As appropriate, the IEP team will also consider and include in the IEP the following:

- a. If the student's behavior impedes his or her learning or that of others, the IEP team will consider the use of positive behavioral supports and other strategies to address that behavior.
- b. If the student has limited English proficiency, the IEP team will consider the language needs of the student. Cognitive academic language proficiency (CALP) must be determined by administering appropriate language dominance tests.
- c. If the student is blind or visually impaired, the IEP team will provide for instruction in Braille and the use of Braille unless the IEP team determines that Braille is not appropriate for the student. This determination can only be made after an evaluation of the student's reading and writing skills, needs, and appropriate reading and

writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille).

- d. The IEP team will consider the communication needs of the student. In the case of the student who is deaf or hard-of-hearing, the IEP team will consider the language needs of the student, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, the student's academic level, and his or her full range of needs including opportunities for direct instruction in the student's language and communication mode.

G. Statewide and Districtwide Achievement Testing

Students with disabilities are to be included in all statewide and districtwide assessments. Participation rates and performance data, both aggregate and disaggregate, for students with disabilities are reported to the public annually.

The IEP team will determine how the student will participate in statewide and districtwide assessments—without accommodations, with accommodations, with adaptations, or by means of an alternate assessment. The IEP team determines what accommodations and/or adaptations to use based on those that are used regularly by the student during instruction or classroom testing and on what is listed in the accommodations section of the IEP.

The IEP team must determine whether the student meets the state criteria for the alternate assessment. It should be noted that some students might participate in parts of the regular assessment and parts of the alternate assessment. For example, a student may participate with accommodations in the *regular* reading portion of the statewide assessment and may participate in the math portion of the statewide assessment using the *alternate* assessment.

The following guidelines will be used to determine how the student will participate in statewide and districtwide assessments:

1. Regular Assessment without Accommodations

The IEP team determines and documents in the IEP that a student with a disability can adequately demonstrate his or her knowledge, abilities, or skills on statewide and districtwide assessments without accommodations.

2. Regular Assessment with Accommodations

Appropriate accommodations for students with disabilities must be based on the individual needs of each student. Accommodation decisions are made by the IEP team and must be recorded in the IEP. Accommodations should facilitate an accurate demonstration of academic achievement and functional performance on state and districtwide assessments. They should not provide the student with an unfair advantage

or change the underlying skills that are being measured by the test. Accommodations must be the same or nearly the same as those used by the student in completing classroom assignments and assessment activities. The accommodations must be necessary for enabling the student to demonstrate knowledge, ability, skill, or mastery. Accommodations *do not* invalidate test results.

3. Regular Assessments with Adaptations

A student may be unable to demonstrate what he or she knows or is able to do without using an adaptation. However, an adaptation inherently circumvents the underlying skills that the test is measuring; therefore, an adaptation *always* invalidates the assessment result. If an adaptation is used, it must be one that the student uses in completing classroom assignments and assessment activities on a regular basis. Further, the use of an adaptation in statewide and districtwide assessments must be clearly coded on the student's score sheet.

The IEP team has the authority to make the decision that a student needs an adaptation in order to participate in statewide and districtwide assessments, even though the adaptation *will* cause the student to score as “not proficient” and to be counted as NOT participating in the assessment. All IEP team members, including the parent/adult student, must understand (a) the possible consequences that could result from this decision and (b) its effect on diploma options and postschool activities involving education, career opportunities, military service, and community participation.

4. Idaho Alternate Assessments

If the student cannot participate in some or all of the general assessment, the IEP must contain a statement that includes the following: (a) the reason the student cannot participate in the general assessment and (b) which of the alternate assessments—language arts, reading, math or science—the student will participate in.

a. Students Eligible to Take an IAA

The IEP team must find that the student meets all of the criteria listed below (a-c) to determine that he or she is eligible to participate in an alternate assessment:

- (1) The student's demonstrated cognitive ability and adaptive behavior prevent completion of the general academic curriculum even with program accommodations and/or adaptations;
- (2) The student's course of study is primarily functional-skill and living-skill oriented (typically not measured by state or district assessments); and

- (3) The student is unable to acquire, maintain, or generalize skills (in multiple settings) and to demonstrate performance of these skills without intensive and frequent individualized instruction.

b. Students Not Eligible to Take an IAA

Students are *not* to be included in an alternate assessment for any of the following reasons:

- (1) The only determining factor is that the student has an IEP;
- (2) The student is academically behind because of excessive absences or lack of instruction; or
- (3) The student is unable to complete the general academic curriculum because of socioeconomic or cultural differences.

H. LRE Explanation and Placement Decisions

The IEP must explain the extent, if any, to which the student will *not* participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities.

In recommending the most appropriate placement in the least restrictive environment (LRE) for the student with a disability, the IEP team must consider the student's needs and the continuum of services available to meet those needs. The parent/adult student must be involved in the placement decision. Removal from the general education environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. A student with a disability is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and adaptations in the general education curriculum. In addition, a student with a disability must be educated with students without disabilities in the general education classroom to the maximum extent appropriate..

Note: The district's reassignment of students (disabled and nondisabled) to another classroom or building in the district is *not* a change of placement for a student with a disability as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; and going to a different school as a result of moving from one grade level to another grade level.

See Chapter 6 for more information on placement in the LRE

I. Consent for Initial Placement

If the parent/adult student refuses to consent in writing to special education and related services following the evaluation and determination of eligibility, the district will not provide special education and related services to the student, in which case:

1. the district will not be in violation of the requirement to make FAPE available to the student or the requirement to provide special education and related services; and
2. the district will not be required to convene an IEP meeting or develop an IEP for the student.

If the parent/adult student wishes to move forward with the development of an IEP and placement in special education, then consent for initial placement in special education must be obtained after the development of an IEP. Consent means that the parent/adult student understands and agrees in writing to the carrying out of the activity for which his or her consent is sought.

J. Parent/Adult Student Objection to the IEP

There may be circumstances when a parent/adult student objects to the IEP team's decisions regarding initial placement in special education or changes in subsequent IEPs. The district will use the following procedures in these situations:

1. Parent/Adult Student Objection to the Initial IEP

Consent is required for the initial provision of special education and related services. If the parent/adult student refuses to give consent for an IEP for the initial provision of special education and related services, the student may not be placed or served.

2. Parent/Adult Student Objection to Changes in Subsequent IEPs

If the parent/adult student disagrees with an IEP change or placement change proposed by the district, he or she may file a written objection to all or parts of the proposed change. If the parent/adult student files a written objection that is postmarked or hand delivered within 10 days of the date he or she receives written notice from the district of the proposed change, the changes to which the parent/adult student objects cannot be implemented. If the changes have already been implemented, implementation of those changes must cease. The district and parent/adult student may use informal methods such as additional IEP team meetings, IEP facilitation, or SDE mediation to resolve the disagreement. If these informal attempts to resolve the dispute fail, the district may request a due process hearing to obtain a hearing officer's decision regarding the proposed change.

If the parent/adult student files a written objection to an IEP change or placement change proposed by the district any time *after* 10 days of receiving written notice, the student must “stay put” in the placement described in the disputed IEP, and that IEP is implemented as written until the disagreement is resolved unless the parent/adult student agree otherwise. However, the written objection cannot be used to prevent the district from placing a student in an interim alternative educational setting (IAES) in accordance with the IDEA 2004 procedures for discipline of a student.

See Chapter 13 for more information about the various forms of dispute resolution.

K. Additional Transition Components for Secondary-Level IEPs

Secondary transition services are defined as a coordinated set of activities for a student with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to postschool activities. The activities include instruction, community experiences, development of employment and other postschool adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These activities are based on the individual student’s needs, taking into account the student’s preferences and interests. The following are required for all secondary students with disabilities.

1. Beginning with the first IEP to be in effect when a student is 16 years old (or sooner at the discretion of the IEP team), the IEP must include:
 - a. transition services (including courses of study) needed to assist the student in reaching postsecondary goals identified on the IEP;
 - b. appropriate measurable postsecondary goals based upon age-appropriate transition assessment related to training, education, and employment; and,
 - c. appropriate, measurable postsecondary goals related to independent living skills, if needed.

The goals and transition services must be updated on the IEP annually.

2. Not later than the student’s 17th birthday, the IEP must include a statement that the student has been informed whether or not special education rights will transfer to the student on his or her 18th birthday. Special education rights will transfer from the parent to the student when the student turns 18 years old unless the IEP team determines that:
 - a. the student is unable to provide informed consent with respect to his or her special education program; or
 - b. the parent has obtained legal guardianship.

For more information on the transfer of rights see Chapter 11, Section 2C, page 162.

3. When a student exits from special education as a result of earning a diploma or aging out, the district will provide the student with a summary of his or her academic achievement and functional performance along with recommendations concerning how to assist the student in meeting postsecondary goals.

L. Following the Meeting

Following the IEP team meeting, a copy of the IEP and written notice of proposed or refused actions must be given to the parent/adult student. IEPs and written notice should also be given to the parent/adult student whenever a change is made to the IEP or upon request.

Section 3. IEP Reviews

A. Annual Reviews

Each student's IEP must be reviewed at least annually, once every 365 days. Meetings may be held any time throughout the school year, as long as the IEP is reviewed annually and is in effect at the beginning of each school year. Either at or after the annual review, written notice that the new IEP changes will be implemented must be provided to the parent/adult student.

The IEP review includes the following purposes:

1. to determine whether the student's annual goals have been achieved;
2. to revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. to determine whether any additional assessments are necessary and to address the results of those conducted;
4. to address information about the student provided to, or by, the parent/adult student;
5. to monitor the continuing eligibility of the student based on an evaluation or review of a variety of data, which may include formal or informal assessment, progress toward IEP goals and when applicable benchmarks/objectives;
6. to write a new IEP; and
7. to consider a reevaluation to determine if a student is no longer eligible and special education services should be discontinued.

B. IEP Amendments

In making changes to a student's IEP after the annual IEP meeting for a school year, the parent/adult student and the IEP team may agree in writing not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend the student's current IEP. Upon request, a parent/adult student will be provided with a revised copy of the IEP with the amendments incorporated. The annual review date remains the date of the original IEP.

If the parent/adult student believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP team meeting. The district will grant any reasonable request for such a meeting. If the district refuses to convene an IEP meeting requested by the parent/adult student, the district must provide written notice to the parent/adult student, including an explanation of why the district has determined the meeting is unnecessary.

If any other member of the IEP team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP team meeting.

Section 4. IEPs for Transfer Students**A. Transfer from an Idaho School District**

When a student with a disability transfers school districts within the same academic year, and enrolls in a new school, and had an IEP that was in effect in Idaho, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent/adult student, until such time as the district adopts the previously held IEP or develops, adopts, and implements a new IEP.

B. Transfer from an Out-of-State District

When a student with a disability transfers from out of state to an Idaho school district within the same academic year, and enrolls in a new school, and had an IEP that was in effect in that other state, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent/adult student, until such time as the district conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP. Within 2 school days, the receiving district shall request records from the sending district.

Section 5. IEPs for Children from the Infant Toddler Program

A. Transition Planning

The district will develop and have in effect an interagency agreement with the Department of Health and Welfare (DHW), the lead agency for the Infant Toddler Program under Part C of the IDEA 2004. The agreement will outline the obligations of each agency to ensure a smooth and effective transition of children assisted under Part C to early childhood special education programs (ECSE) under Part B.

In the case of a child who may be eligible for ECSE services, the district will participate in a transition planning conference with the family that is arranged by the DHW. The conference will be conducted at least 90 calendar days (and up to 9 months at the discretion of all parties) before the child's 3rd birthday to discuss eligibility requirements under Part B of the IDEA 2004 and any services the child may receive.

The DHW has the responsibility to:

1. review the child's program options for the period from the child's 3rd birthday through the remainder of the school year; and
2. establish a transition plan that includes steps to support the transition of the toddler with a disability to preschool services. The interagency agreement should outline the district's participation in this process.

B. IEP or IFSP Required

A student 3 through 5 years old who is eligible for ECSE services must have an IEP in place by his or her 3rd birthday. At the discretion of the district, the IEP team will consider an individual family service plan (IFSP), which may be used in place of an IEP, if the child's parent is provided with a detailed explanation of the differences between an IFSP and an IEP and if written parental consent to use the IFSP is obtained. An IFSP may be used in place of an IEP and must be developed in accordance with Part B policies and procedures. The district is not required to develop an IFSP instead of an IEP. The district is required to implement only the educational components of the IFSP, if one is used.

C. Consent and Notice Requirements

1. Initial Provision of Special Education: Regardless of whether a district gains consent to evaluate or does not need to evaluate, when a student with a disability transitions from a Part C program, parental consent for the initial provision of special education and related services in a Part B program and written notice of the proposed IEP or IFSP are required. Eligibility and initial placement must be documented for Part B services.

2. Release of Information: The district must obtain written parental consent for the release of information to obtain pertinent student records from noneducational agencies such as DHW developmental disabilities programs, medical providers, day-care centers, and Head Start.
3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility and the student's present levels of performance, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier to Part C). Otherwise, only written notice to inform the parent of the district's decision to use the current evaluation data, and not to conduct any further assessments, must be provided to the parent. The parent must also be informed of his or her right to request additional tests.

D. Child's Status During Due Process Hearing Proceedings

Following the development of an IEP or an IFSP, if an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot "stay put" in Part C when he or she is over the age of 3. With written consent of the parent, the child must be placed in the public school until completion of all the hearing proceedings. If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.

E. Procedural Safeguards Notice

A copy of the *Procedural Safeguards Notice* must be made available to the parent/adult student only one time a year except that a copy will also be given upon:

1. initial referral or parental request for evaluation;
2. the first occurrence of the filing of a complaint; and
3. the request of a parent/adult student.

It is recommended that the *Procedural Safeguards Notice* be given at the annual IEP meeting.

Section 6. Students with Disabilities in Adult Prisons

The following requirements do not apply for students with disabilities who are convicted as adults under Idaho law and incarcerated in adult prisons:

1. The student will not participate in statewide assessments.
2. Transition planning and services do not apply if the student will remain in prison beyond his or her 21st birthday.

The IEP team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

Chapter 6
LEAST RESTRICTIVE ENVIRONMENT

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Chapter 6

LEAST RESTRICTIVE ENVIRONMENT

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) states that, to the maximum extent appropriate, students with disabilities, including preschool students with disabilities, are to be educated with students who are not disabled. This concept is known as the least restrictive environment (LRE). An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an individualized education program (IEP).

The student's IEP must (a) indicate the extent to which the student participates in the LRE and (b) explain to what extent, if any, the student will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. Data regarding LRE placements is collected from the district by the State Department of Education (SDE) and becomes public information.

Section 1. Least Restrictive Environment Considerations

The IEP team must consider the following when determining the LRE in which the IEP can be implemented:

1. LREs: A student with a disability is to be educated with age-appropriate students who are not disabled to the maximum extent appropriate based on the IEP. The LRE decision focuses on with *whom* the student is educated rather than *where* the student is educated. This provision includes students with disabilities placed in public or private institutions or other care facilities.
2. Basis of Placement: Placement decisions are made individually for each student. The services and placement needed by each student with a disability must be based on the student's unique needs that result from his or her disability, not on the student's category of disability.
3. When to Make and Review Placement Decisions:
 - a. Placement decisions for a student with a disability are made *following* the determination of needs, goals, and benchmarks/objectives.
 - b. Placement decisions are revisited at least annually by the IEP team, which includes the parent/adult student and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options available in the district.
4. Neighborhood School: A student with a disability must be enrolled in the school he or she would attend if not disabled, unless the IEP requires another location. If the student cannot be educated in the neighborhood school, the student must be provided an educational program as close to the student's home as possible.

5. Similar-age Peers: In considering a setting outside the general education environment, the IEP team must recommend placement in environments, including classrooms and schools, with similar-age peers.
6. Accommodations and/or Adaptations: A student with a disability is not removed from age-appropriate general education environments solely because of needed accommodations and/or adaptations in the general education curriculum.
7. Harmful Effects of Placement: Consideration must be given to any potentially harmful effects of the placement on the student or on the quality of services
8. Array of Services and a Continuum of Placement Options: The district must have an array of services and a continuum of placement options available to meet the individual needs of each student.
9. Removal from the General Education Environment:
 - a. Special classes, separate schooling, and other types of removal of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education environment, even with the use of supplementary aids and services, cannot be achieved satisfactorily.
 - b. When a student with a disability is so disruptive in the general education environment that the education of other students is significantly impaired and the needs of the student with a disability cannot be met in that environment, the full-time general education classroom placement may not be appropriate.
10. Participation in Nonacademic and Extracurricular Services and Activities: A student with a disability must be allowed to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development and assistance in making outside employment available.

Section 2. Placement Options

In recommending an appropriate placement for a student with a disability in the LRE, the IEP team must consider the student's needs and the services available to meet those needs. The continuum of services for school-age students is described in subsection A below. The services for preschool students are described in Section 2B, page 100. Regardless of placement, the

student must be given access to the general education curriculum unless the IEP team determines it to be inappropriate.

A. Placement Options for School-Age Students

The following types of public and private placements are listed from the least restrictive to most restrictive:

1. General Education with Accommodations

The student remains in the general education classroom. The teacher and/or student is supplied with special equipment and supplies, special transportation, and other supportive services as needed. The special education teacher or the appropriate therapist works with the general education teacher or the general education paraprofessional to implement the IEP.

2. General Education with Specially Designed Instruction

The student remains in the general education classroom. The student, whose needs can be met with part-time support in the general education classroom, is provided with specially designed instruction by one or more of the following: a special education teacher, an itinerant specialist, a therapist, or a special education paraprofessional. The instruction may be on an individual or small-group basis and is always coordinated with general education classroom activities.

3. General Educational Environment with Resource Room Support

The student receives as much of the general education curriculum as appropriate. Additional educational experiences are provided by a special education teacher, an itinerant specialist, or a therapist in a pull-out program designed to meet identified needs. The duration of time spent with the teacher, itinerant specialist or therapist is determined by the degree of intervention necessary to meet the student's needs. The instruction may be provided on an individual or small-group basis and is coordinated with general education curriculum and activities.

4. Self-Contained Setting Outside the General Education Classroom

The student receives the majority of instruction in a self-contained setting outside the general education classroom. The student participates in the general education environment and curriculum to the extent that he or she can benefit from it. Involvement with peers without disabilities is provided when possible or appropriate.

5. Special Education Day-School

The student receives all or the majority of instruction in a separate day-school and participates in those parts of the general education curriculum that are appropriate.

6. Home and Hospital Instruction

A student with a disability who is unable to attend school because of medical concerns receives special education and related services at home, in a convalescent home, or in a hospital.

7. Institutional Services

The student lives in a residential facility and receives all instruction in this setting. Involvement with peers without disabilities is provided when possible or appropriate.

B. Settings for Preschool Students

All LRE considerations apply to preschool students with disabilities who are entitled to receive a free appropriate public education (FAPE). Settings for implementing IEPs for students of legal kindergarten-age are the same as for all other school-age students. Public schools that do not operate programs for preschool students without disabilities are not required to initiate such programs solely to satisfy LRE requirements. However, the district must meet the individual needs of preschool students with disabilities in LREs by providing alternative settings, which may include:

1. providing opportunities for participation (even part-time) of preschool students with disabilities in other preschool programs operated for preschool students without disabilities by other agencies such as Head Start;
2. placing preschool students with disabilities in the following:
 - a. private school programs for preschool students *without* disabilities; or
 - b. private preschool programs that integrate students *with and without* disabilities; and
3. locating classes for preschool students with disabilities in elementary schools.

Chapter 7
DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

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Chapter 7

DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

Section 1. Discontinuation of Services

A. Students Who Are No Longer Entitled to Services

The district will follow appropriate procedures to discontinue special education services to students who are no longer entitled to those services.

1. Student No Longer Meets Eligibility Criteria

If it is suspected that a student no longer meets the eligibility criteria for the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), the evaluation team will conduct a reevaluation and arrange to have additional assessments conducted if necessary. If the student is no longer eligible, the district will provide the parent and adult student with written notice of this decision prior to discontinuing special education services.

2. Student Receives a Regular High School Diploma

The district's obligation to provide special education services ends when the student meets the district and state requirements that apply to all students for receipt of a regular high school diploma. Although this is considered a change of placement, a reevaluation is not required. Prior to graduation and the discontinuation of special education services the district will:

- a. provide the parent/adult student with written notice; and
- b. provide the parent/adult student with a summary of performance along with recommendations to assist the student in meeting his or her postsecondary goals.

3. Student Reaches Maximum Age

For students who have not yet graduated from high school by meeting requirements comparable to regular graduation requirements, the district's obligation to provide special education services ends at the completion of the semester in which the student turns 21 years of age. This is considered a change of placement that does not require a reevaluation. If a student is turning 21, the district will provide the parent/adult student with:

- a. written notice; and
- b. a summary of performance along with recommendations to assist the student in meeting his or her postsecondary goals.

B. Change in District Obligation to Provide Services

Under certain circumstances, a student may continue to be eligible for special education services, but the district's obligation to provide services changes.

1. Transfer to Another District

When a student moves out of the district, the district will forward the student's special education records electronically or by mail within 10 calendar days of the request from the new district. The records must include, at least, the student's most recent individualized education program (IEP) and eligibility documentation. The sending district will retain copies or originals of the most recent 5 years of records, including IEPs and eligibility documentation. During an audit, Child Count verification, or monitoring, this documentation may be needed to demonstrate that the student was eligible for special education and received special education services from the district.

2. Enrollment in Private School or Home School

When a parent/adult student withdraws a student from public school and enrolls him or her in a private school or home school, the district's responsibilities vary depending on the circumstances. See Chapter 9 beginning on page 117 for more information.

3. Dropouts

When a student drops out of school, written notice will be sent to the parent/adult student and a copy of the notice will be placed in the student's special education confidential file. If the student reenrolls and is still eligible for special education, the previous IEP can be implemented if it is current and appropriate. A new IEP must be developed if needed.

C. Request for Withdrawal from Special Education

When a parent/adult student requests withdrawal from special education services, an evaluation team must determine whether the student is still eligible for special education services. Written notice must be sent to the parent/adult student following the determination of whether or not the student is still eligible to receive special education services. If the evaluation team determines that the student is still eligible for special education, the district will continue to provide services unless SDE mediation or a due process hearing decision determines otherwise.

Section 2. Graduation

Graduation means meeting district and state requirements for receipt of a regular high school diploma. If a student is not granted a regular high school diploma or if the regular high school diploma is granted based on completion of adapted graduation requirements, the student is entitled to receive a free appropriate public education (FAPE) through the semester in which he or she turns 21 years of age or determined no longer eligible as a result of a reevaluation. A General Education Development (GED) certificate does not meet district requirements that are comparable to a regular high school diploma.

A. Individualized Education Program (IEP) Considerations regarding Graduation

1. General Considerations

- a. The IEP team must include a district representative when establishing graduation requirements on the IEP.
- b. At least one year prior to the anticipated graduation the IEP team must consider whether the student will meet all district and state graduation requirements.
- c. The IEP team must document any accommodations and adaptations made to the district's and state's regular graduation requirements on the student's behalf.

2. Regular Graduation Requirements with Accommodations

Accommodations to regular graduation requirements are determined by the IEP team and are deemed necessary for the student to complete regular graduation requirements. Further:

- a. Accommodations to regular graduation requirements must specifically address completion of the student's secondary program.
- b. Accommodations will maintain *the same level of rigor* to the district and state graduation requirements. For example, a student who is deaf may not have to take a required oral speech class but would be required to take a different communication class that is equally rigorous.
- c. Accommodations made to any district or state regular graduation requirement must be stated in the student's IEP.

3. Regular Graduation Requirements with Adaptations

Long-term consequences for the student must be considered when adaptations are made to graduation requirements. Further:

- a. Adaptations to regular graduation requirements must specifically address completion of the student's secondary program.
- b. Adaptations *may alter the level of rigor* required in the district or state graduation requirements. Examples of adaptations include changes made to course content, objectives, instructional strategies, and grading, as well as the use of alternate methods for demonstrating the acquisition of skills.
- c. Adaptations of any district or state regular graduation requirement will be stated on the student's IEP.

B. Demonstrating Proficiency of State Achievement Standards

A State Board of Education rule (IDAPA 08.02.03.105.03) requires a demonstration of proficiency regarding the 10th-Grade Idaho Achievement Standards as a condition of graduation. Each student receiving special education services will include as part of his or her IEP a statement of how the student will demonstrate proficiency in the Idaho Achievement Standards as a condition of graduation, if it is different than meeting proficient or advanced scores on the high school ISAT or an IAA. A student with an IEP may meet this requirement by:

1. achieving the proficient or advanced score on the Idaho Standards Achievement Test (ISAT) or, for eligible students, an IAA; or
2. the student may appeal to his or her local school board to use the mechanism established by the local school board as an alternate method of demonstrating proficiency.

Exception: Students receiving special education services who meet graduation requirements in the graduating classes of 2006 and 2007 may use alternate methods of demonstrating proficiency on the achievement standards as outlined in their IEPs. They do not need to appeal to use the locally established mechanism to demonstrate proficiency.

C. Graduation Ceremonies

A special education student who completes his or her secondary program through meeting regular graduation requirements or criteria established on his or her IEP will be afforded the same opportunity to participate in graduation ceremonies, senior class trips, etc., as students without disabilities.

Section 3. Transcripts and Diplomas

A. Transcript

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts must adhere to the following conditions:

1. Accommodations that allow the student to complete and demonstrate that he or she has met graduation requirements will not be noted on the transcript.
2. Adapted course work may be noted on the transcript if the parent/adult student is informed in advance and the designation is not discriminatory.
3. Course designations, titles, or symbols that are used solely to identify adapted course work that is taken by students with disabilities will not be used.

B. Diploma

1. For students who are eligible for special education services, the district will issue a regular high school diploma at the completion of their secondary program; this includes students who meet the regular graduation requirements with accommodations and/or adaptations.
2. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to typical students without disabilities in the same graduating class.

Section 4. Grades, Class Ranking, and Honor Roll

Grades earned by students with disabilities will not be categorically disregarded or excluded from districtwide grade point average (GPA) standing. The district may establish objective criteria for class rankings, honors, etc., that weight courses according to degree of difficulty or exclude noncore courses so long as such practices are nondiscriminatory. The district may use contracts with a student to establish grading criteria.

Chapter 8
CHARTER SCHOOLS

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Chapter 8

CHARTER SCHOOLS

Federal law requires that students with disabilities be offered educational choices comparable to those offered to students without disabilities. One of these choices is the opportunity to attend a charter school. Each public charter school shares in the obligation to accept and appropriately serve students with disabilities under the IDEA in the same manner as any other public school.

Section 1. Definition and Parent/Student Rights

A. Definition of Charter Schools

In Idaho, a charter school is a public school authorized by Chapter 52, Title 33, Idaho Code. A charter school operates in one of two ways:

1. independently as a nonprofit, publicly funded, nonsectarian school within a district, if authorized by the district; or
2. as its own local education agency (LEA), if authorized by the State Board of Education (SBE).

A charter school is bound by the conditions of its charter, all federal laws, and Idaho Code.

B. The Rights of Charter School Students and Their Parents

A charter school student is a public school student. Students with disabilities who attend charter schools and their parents have all of the rights under the Individuals with Disabilities Education Improvement Act 2004 (IDEA 2004), Section 504 of the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA) as students who attend other public schools. Idaho law specifically states that charter schools cannot discriminate against any student on any basis prohibited by federal law including, but not limited to, the IDEA 2004, Section 504, and the ADA.

Section 2. Responsibility for Services

A. Charter School Authorized by the District

The district is ultimately responsible to ensure that the requirements of the IDEA 2004 are met with respect to students attending charter schools authorized by the district. A charter school's compliance with the IDEA 2004, Part B, is required regardless of whether the charter school receives any Part B funds.

1. To ensure that a charter school authorized by the district meets IDEA 2004 requirements, the district must do one of the following:
 - a. Conduct Child Find activities, including evaluations, and provide special education and related services to students enrolled in charter schools authorized by the district, as well as meet all other IDEA 2004 requirements with respect to its charter school students; or
 - b. Ensure that any charter school petition the district approves contains sufficient information, plans, procedures, and budgets to ensure that the charter school will conduct Child Find activities, including evaluations, and will provide special education and related services in compliance with all state and federal requirements. The district must also ensure that the charter school actually carries out these responsibilities by overseeing the charter school's implementation of the IDEA 2004 by working in collaboration with the charter school where possible and/or revoking the charter school petition as a last resort when necessary; or
 - c. Implement a combination of agreed upon activities from items a and b above.
2. The district must have information on file with the State Department of Education (SDE) to demonstrate that students with disabilities who attend charter schools authorized by the district will receive special education and related services from either the district or the charter school (or a combination of both). This includes providing supplementary and related services on site at the charter school to the same extent that the district has a policy or practice of providing services on site at its other public schools. Part B funds will be available for that purpose.
3. The district will ensure that its charter schools participate in all monitoring activities conducted by the SDE.

B. Charter School Operating as an LEA

Only the SBE has the authority to allow the creation of a public charter school that operates as an LEA. A charter school operating as an LEA, whether virtual or brick-and-mortar or combination thereof, has an obligation to accept and appropriately serve students with disabilities and is solely responsible to ensure that the requirements of the IDEA 2004 are met with respect to students enrolled. Compliance with the IDEA 2004, Part B, is required regardless of whether the public charter school receives any Part B funds. A charter school operating as an LEA must:

1. participate in all monitoring activities conducted by the SDE; and,
2. in its first year of operation, participate in an onsite technical assistance visit by an SDE special education monitoring team to ensure that the essential components of a special education program are in place.

Section 3. Essential Components of a Special Education Program

The Idaho charter school law does not specify *how* special education services will be provided to eligible students enrolled in a charter school. The law does require each petition for a charter to describe the manner by which special education and related services will be provided to eligible students with disabilities.

Prior to approving a petition for a charter school, the authorizing entity—either the district or the SBE—must ensure the petition includes:

1. Nondiscriminatory enrollment procedures.
2. Adequate plans, policies, procedures, contractual or other arrangements, and budget to ensure that students with disabilities attending the charter school will receive special education and related services that meet all the requirements of the IDEA 2004. The petition should describe how the charter school or its authorizing district will:
 - a. have special education and related services, as identified in student IEPs, in place by the first day of the school year;
 - b. conduct Child Find activities and evaluations;
 - c. develop, review, and revise IEPs in accordance with state and federal law;
 - d. employ and use highly qualified special education personnel;
 - e. meet LRE requirements;
 - f. implement the IDEA 2004 discipline procedures; and
 - g. protect student and parent rights.
3. Provisions to employ special education and related services professionals who are appropriately licensed and/or certificated for the duties they are assigned. This could include any combination of the following:
 - a. full- or part-time professionals employed by the charter school to serve special education students;
 - b. contracts with private individuals or agencies; or

- c. a contract or other arrangement to have special education services provided by the authorizing district or the student's district of residence.
4. A professional development plan for the training needs of special education personnel as well as general education teachers in order to meet the needs of students with disabilities who are enrolled in the charter school.
5. A plan that ensures access to charter school programs, as required by the ADA. This plan may include the actual location of the school, classrooms, and settings within the classrooms to permit access by students with disabilities.
6. A transportation plan for special education students who may, because of the nature of their disabilities, be entitled to specialized transportation as a related service, even if the charter school does not provide transportation to other students.
7. Provisions for notifying the authorizing entity in the event that a formal complaint or due process hearing request is filed by or on behalf of a charter school student.

Section 4. Funding

A. State Funds

The SDE will make apportionment payments (from state general funds) to each charter school based on attendance figures. The SDE will pay state funds directly to charter schools using the funding formula described in state law. A charter school may also be eligible for the following funds:

1. state funds for special education students who live in licensed group, foster, or personal care services homes under the provision of Idaho Code 33-1002B;
2. district-to-agency contract funds under a provision of Idaho Code 33-2004;
3. funds to serve high numbers of students with emotional disturbance under Idaho Code 33-2005; and
4. state enhancements funding sources such as the LRE funds, which are to be negotiated between the district and the charter school.

B. Federal Funds

The SDE disburses federal flow-through funds to districts. A charter school is eligible for a proportionate share of the district's Part B funds if it adopts and implements approved policies and procedures for special education and provides an assurance to the district that funds will be

used in accordance with Part B allowable uses. The district will allocate Part B funds to an eligible charter school unless the district and charter school agree to the provision of services of comparable value. The approved charter will identify whether the district will provide funding or services of comparable value.

1. The amount of funds or comparable services will generally be equal to the per-student amount the district is allocated from the SDE in the current year multiplied by the charter school's December 1 Child Count from the previous school year.
2. Under certain circumstances the district must allocate Part B funds to an eligible charter school based on the number of special students enrolled and served in the current school year.
 - a. The district will allocate funds to a charter school within 5 months of opening or significantly expanding its enrollment under the following circumstances:
 - (1) The charter school notifies the district at least 120 calendar days before it opens or significantly expands its enrollment due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas; and
 - (2) The charter school actually opens or significantly expands its enrollment prior to February 1.
 - b. The district will allocate funds to the charter school using the same per-student amount that it receives from the SDE. At a minimum, the district will allocate amounts as follows:
 - (1) If the opening or expansion occurs prior to November 1, the charter school will be allocated funds in the current school year based on the current school year's December 1 Child Count.
 - (2) If the opening or expansion occurs after November 1 but before February 1, the charter school will be allocated a pro-rata share of funds in the current school year based on the number of enrolled special education students with active IEPs 30 days after the opening or expansion. The pro-rata share will be the number of days the charter school will be open or expanded, divided by the number of days in the school year, multiplied by the number of special education students.
 - (3) If the opening or expansion occurs on or after February 1, the charter school will be allocated funds in the following school year based on the following school year's December 1 Child Count.

Chapter 9
PRIVATE AND HOME SCHOOL STUDENTS

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Chapter 9

PRIVATE AND HOME SCHOOL STUDENTS

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) incorporates the following:

- ▶ statutory and regulatory language, which states that students who are voluntarily enrolled in private or home schools are not entitled to all of the same services as public school students;
- ▶ district responsibilities for special education students under Idaho's dual enrollment law; and
- ▶ the legal requirements that come into play when a parent unilaterally enrolls his or her child in a private school and asks the district for reimbursement of these costs.

Section 1. Definitions of Private School Placements

In order to describe the district's responsibilities for serving private school students, it is helpful to distinguish three separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why.

A. Definition of Voluntary Enrollment by a Parent

A parent may choose to enroll his or her child in a private or home school for a variety of personal reasons, such as to obtain a religious education, to attend a school with a particular philosophy or curriculum, or because the parent is dissatisfied with the services offered or provided by the district. This is considered a voluntary enrollment. See Section 2 on page 120 and Section 4 on page 129 of this chapter for district responsibilities.

B. Definition of District Placement

At times, the district may place a student in a private school or facility to fulfill its obligation to provide a free appropriate public education (FAPE). These placements are always made by an individualized education program (IEP) team in accordance with the requirements of Section 3 on page 128 of this chapter.

C. Definition of Unilateral Placement by a Parent

A parent may withdraw a student with a disability from a public school and then enroll the student in a private school or provide services from a private provider at parent expense because he or she believes the district has not provided FAPE in a timely manner. In this case, the parents would be seeking reimbursement for the costs associated with the placement. This is considered

a unilateral placement. All students who are unilaterally placed are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of a unilateral placement is included in Section 5 on page 129 of this chapter.

Section 2. Students Voluntarily Enrolled by Parents

A. Child Find

The district must have an ongoing Child Find system to locate, identify, and evaluate all students with disabilities ages 3 through 21 educated within the district's geographic boundaries. This includes students who have been placed by a parent in a private school (including a religious school) located in the district regardless of the student's residency and students who are enrolled in home school.

The Child Find process will be designed to encompass the following:

1. The Child Find process will ensure the equitable participation of parentally placed private and home school students with disabilities.
2. Child Find activities for private and home school students will be similar to Child Find activities for public school students, which include the evaluation process within comparable timelines.
3. The district will consult with private school representatives and representatives of parents who place their children in private schools regarding the Child Find procedures.

B. Annual Count of Eligible Students

The district must conduct an annual count on December 1 and report to the State Department of Education the number of private and home school children evaluated, the number found eligible and the number who are served with special education services. This count will be used to determine the amount of funds the district must expend providing special education and related services to private and home school students in the next school year (see Section 2E on page 122). The district will consult with representatives of private school students to determine how to conduct the count.

C. Consultation (may be done in coordination with Title 1 requirements for consultation)

To ensure timely and meaningful consultation a district will consult with private school representatives and representatives of parents of parentally placed private school students with disabilities during the design and development of special education and related services for the students, including the following:

1. Child Find: The Child Find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
2. Proportionate Share of Funds: The determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated.
3. Consultation Process: The consultation process among the district, private school officials and representatives of parents of parentally placed private school students with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school students with disabilities identified through the Child Find process can meaningfully participate in special education and related services
4. Provision of Special Education and Related Services: How, where, and by whom special education and related services will be provided for parentally placed private school students with disabilities, including a discussion of:
 - a. types of services, including direct services and alternate service delivery mechanisms;
 - b. how such services will be apportioned if funds are insufficient to serve all students; and
 - c. how and when these decisions will be made.
5. Written Explanation by the District Regarding Services: How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.
6. Written Affirmation: When timely and meaningful consultation has occurred:
 - a. the district will obtain a written affirmation signed by the representatives of participating private schools;
 - b. if the representatives do not provide the affirmation within a reasonable period of time the district will forward the documentation of the consultation process to the State Department of Education (SDE).

D. Compliance

1. General Compliance: A private school official has the right to submit a complaint to the SDE that the district:
 - a. did not engage in consultation that was meaningful and timely; or
 - b. did not give due consideration to the views of the private school official.
2. Procedural Compliance
 - a. If the private school official wishes to submit a complaint the official will provide the basis of the complaint to the SDE.
 - b. The district will forward the appropriate documentation to the SDE.
 - c. If the private school official is dissatisfied with the decision of the SDE, the official may submit a complaint to the Secretary of the US Department of Education by providing the basis of the complaint against the district to the Secretary, and the SDE will forward the appropriate documentation to the Secretary.

E. Determining the proportionate funding for private school students

IDEA requires school districts to use a proportionate share of funds received under Part B to provide services for parentally placed students with disabilities who attend private schools within the boundaries of the district, regardless of their place of residence. To determine this proportionate amount, the district must first determine the number of these private school students through the child-find activities developed in the consultation process.

The number of parentally placed private school students is divided by the total (public and private) number of students with disabilities in the district to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by the district under Part B and Section 619 to determine the district's obligation.

Example for the XYZ School District:

- A. The number of parentally placed private school children within the district on December 1, 2005: **10**
- B. The number of public school children with disabilities on December 1, 2005: **90**
- C. Percentage of private school children with disabilities: **A divided by A+B = 10%**
- D. Total Part B and Section 619 funds allocated for school year 2006-2007: **\$150,000**

E. Amount the district must spend on providing special education and related services to parentally-placed private school students in 2006-2007: **C x D = \$15,0000**

1. State and local funds may supplement but may not supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities.
2. The costs of private school consultations and of carrying out child-find activities may not be paid from the proportionate share of funds.
3. The cost of any special education or related service, such as direct service, consultation, equipment, materials, or transportation may be used to determine that the district has satisfied its expenditure requirement for private school students with disabilities, including those who are dually enrolled.

F. Expenditure Guidelines

1. The district may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the district must:
 - a. retain title and exercise continuing administrative control over all equipment and supplies;
 - b. ensure that all equipment and supplies are used only for Part B purposes;
 - c. ensure that all equipment and supplies can be removed without remodeling the private school; and
 - d. remove equipment and supplies if necessary to prevent unauthorized use.
2. The district may use Part B funds to pay an employee of a private school to provide services to students with disabilities when the employee performs the services:
 - a. outside of his or her regular hours of duty; and
 - b. under public supervision and control.
3. Part B funds must not be used to:
 - a. finance the existing level of instruction in the private school or otherwise benefit the private school;
 - b. meet the needs of the private school; or

- c. meet the general needs of students enrolled in the private school.
- 4. Part B funds must not be used for repairs, remodeling, or construction of private school facilities.
- 5. If it is possible for classes to include students enrolled in both public and private schools, then the classes must not be organized separately on the basis of school enrollment or religion.
- 6. The district must not appropriate any funds to private schools controlled by any church, sectarian, or religious denomination.

G. Determination of Services

No private or home school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in the district. Decisions about the services that will be provided must be made in accordance with the following requirements:

- 1. Prior to a decision on how to meet its expenditure the district must engage in a genuine, meaningful, and timely consultation with appropriate representatives of private schools and representatives of parents of private and home school students with disabilities. During the consultation, the district will allow the private and home school representatives to express their views about each of the decisions (items a-e addressed below in number 2) that the district will make.
- 2. In light of the amount of funds to be spent by the district, the consultation must consider the number of private and home school students with disabilities, their needs, and their location to determine:
 - a. what services will be provided;
 - b. which students will receive services;
 - c. how services will be provided;
 - d. in what nonsecular location services will be provided; and
 - e. how the provided services will be evaluated.
- 3. Following consultation with the private and home school representatives, the district will make final decisions concerning items a-e addressed above in number 2. Annual consultation is not required to make these decisions. The district determines the period between consultations based on changing circumstances within the district, such as

significant changes in the total amount of funds to be expended and/or the number and location of private and home school students with disabilities.

4. If an evaluation team determines that a student needs special education and related services:
 - a. The district must offer to make FAPE available upon enrollment or dual enrollment in a district public school; or
 - b. If the parent chooses not to enroll the student in the district public school and designated funds are available, the district will initiate a meeting that includes a representative of the private school to develop a Services Plan (SP). The SP must describe the specific special education and related services that will be provided to the student in light of the determinations that have been made by the district.

H. Provision of Services

1. Private and home school students with disabilities may receive a different amount of services than public students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private or home school student to receive only a related service or piece of equipment.
2. Special education and related services provided to parentally placed private school students with disabilities, including materials and equipment, will be secular, neutral and nonideological.
3. The district is not required to provide services to a student with a disability who attends a private school outside the district unless the parent decides to enroll the student in the public school of residence.
4. Services will be provided at a public school building or another nonsectarian site determined by the district in consultation with appropriate representatives of private school students.
5. Services provided to private and home school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.
6. Any services the district provides to a private or home school student must be in accordance with an SP.
7. To the extent appropriate, the district must initiate and conduct meetings to develop, review, and revise SPs in accordance with the following requirements:

- a. An SP must be in effect at the beginning of each school year and accessible to each person responsible for its implementation.
 - b. Meetings must be held to review and revise SPs at least annually to address any lack of student progress toward goals and in the general education curriculum.
 - c. The SP team members include the same members as an IEP team. The district will ensure that a representative of the private or home school attends these meetings or participates by some other means.
 - d. A parent must be invited to SP meetings at a mutually agreed upon date and time. The invitation must indicate the purpose, time, and location of the meeting. The parent must be informed that he or she may bring other persons knowledgeable about the student to the meeting. A copy of the SP will be given to the parent.
 - e. The team developing the SP will consider the student's strengths and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the SP.
8. If necessary for a private or home school student to benefit from or participate in the services the district has selected to provide, the district must provide transportation from the student's school or home to the site where services will be provided. The district must take the student back to either the private school or the home, depending on the timing of the services. In this sense, transportation is not a related service but a means of making the services offered accessible. Transportation costs may be included in the district's expenditure requirement. The district is not required to transport the student from home to the private school.

I. Content of a Services Plan

Given the services that the district has elected to provide to private and home school students, the SP must meet the requirements of the IEP to the extent appropriate (see Chapter 5). The SP excludes sections pertaining to:

1. extended school year (ESY) services;
2. participation in statewide and districtwide assessments;
3. placement determination (LRE) ;
4. December 1 federal report settings; and
5. elements that, although typical for an IEP, would be inappropriate given the services the district has elected to provide.

J. Dispute Resolution

Due process hearings are available to parents of private and home school students only on the issue of Child Find and evaluation. Parents may challenge decisions regarding the provision of services by filing a formal complaint with the SDE.

Section 3. Students Placed by the District

When the district places a student with a disability in a private school or facility, the district must ensure the following:

1. All special education procedures and timelines are followed.
2. Special education and related services are provided in accordance with an IEP.
3. A representative of the private school or facility attends or participates in the meeting to develop the IEP.
4. The responsibility for reviewing and revising IEPs remain with the district.
5. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP meeting conducted in a geographical area outside the jurisdiction of the district.
6. The placement in the private school or facility is the LRE for that student.
7. The student is provided an education that meets state and district standards.
8. The student is afforded the same rights as students with disabilities who attend public schools. The parent is afforded the same rights as parents of students attending public schools.

In accordance with federal and state law, the SDE must approve special education programs in private schools and facilities. The district must ensure a program is approved prior to placing a student in that school or facility.

At the discretion of the district, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting, the district must ensure that the parent and a district representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

Section 4. Dual Enrollment by Parents

According to Idaho Code, parents of private and home school students “shall be allowed to enroll the student in a public school for dual enrollment purposes.” Private or home school students who are dually enrolled are considered to be nonpublic school students. The district must allow private and home school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and/or
1. have the opportunity to receive special education and related services at the public school site.

When dually enrolled, private and home school students who meet eligibility requirements for special education under the IDEA 2004 must receive services in conformance with an IEP or SP. The dual enrollment statute does not establish an entitlement for a student with a disability to (a) receive special education and related services at the private school or home school site or (b) receive services that would not be provided if the student were enrolled in public school.

The reporting of attendance for private and home school students in the district is allowed under dual enrollment. If a student attends at least 2.5 hours per week without rounding hours, he or she must be included in the weekly aggregate attendance. The average daily attendance (A.D.A.) is computed as .5 if the aggregate weekly hours are 2.5 or greater but less than 4.0 hours. When there are 4.0 hours or greater, divide by 4 to get the A.D.A.

Dually enrolled private and home school students with an SP will be included on the district’s regular December 1 Child Count for the purpose of generating federal special education funds.

Section 5. Unilateral Placement by Parents

A. General Provisions for Reimbursement

1. The district is required to make FAPE available to all eligible students with disabilities. If parents do not access FAPE, then the district is required to make provisions for private school students to receive Part B services consistent with Section 2E on page 122 of this chapter.
2. The district is not required to pay for costs of tuition, special education, or related services at a private school or facility for a student who was unilaterally placed there by a parent if the district made FAPE available to the student in a timely manner. One way for the district to document that FAPE was available is to have developed or reviewed an IEP for a student who has been evaluated and found eligible. If a parent disagrees

with the availability of FAPE and there is a question about financial responsibility, the parent may request a due process hearing

3. If the parent of a student with a disability, who previously received special education and related services from the district, enrolls the student in a private elementary or secondary school without the consent of the district, a court or hearing officer may order the district to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:
 - a. the district had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and
 - b. the parent's placement is appropriate.
4. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards.

B. Denial or Reduction of Reimbursement

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. Prior to removal of the student from the public school, the district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.
2. A judicial decision finds unreasonableness with respect to the actions taken by the parent.
3. The parent did not inform the district that he or she rejected the placement proposed by the district to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This written notification by the parent must be provided to:
 - a. the IEP team at the most recent IEP meeting prior to removing the student from the public school; or
 - b. the district at least 10 business days (including any holidays that occur on a business day) prior to removing the student from public school.

Reimbursement will not be reduced or denied under any of the following circumstances:

1. The district did not notify the parent of his or her obligation to provide the notice set forth in number 3 above.

2. The school prevented the parent from providing notice.
3. The parent cannot write in English or has a disability that prevents a written statement.
4. The district's proposed placement would likely result in physical or serious emotional harm to the student.

Chapter 10
IMPROVING RESULTS

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Chapter 10

IMPROVING RESULTS

This chapter reflects the changes in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) that focus on improving educational outcomes, analyzing and reporting data to the public, and ensuring that personnel who work with students with disabilities are prepared to meet their unique needs.

Section 1. Performance Goals and Indicators

The IDEA 2004 require states to establish performance goals and indicators for students with disabilities related to results on statewide assessments, graduation rates, and drop-out rates. To the maximum extent possible, the goals for students with disabilities must be consistent with the goals and standards established by the state for all students. The State Department of Education (SDE) is required to annually inform the public and the U.S. Department of Education of the progress the state has made in meeting these goals.

In addition to setting goals for students with disabilities in the required areas of statewide assessment results, graduation rates, and drop-out rates, Idaho has also established goals that address participation in assessments, postschool outcomes, suspension and expulsion rates, and highly qualified of personnel.

A. Idaho's Performance Goals and Indicators

Idaho's performance goals have indicators that can be used as reference points for measuring progress toward the goals, similar to the way benchmarks/objectives can be used to measure progress are intended to:

1. include all special education students in the statewide assessment program;
2. consistently improve and sustain a high level of performance on statewide assessments by special education students;
3. decrease the drop-out rate for special education students;
4. increase the graduation rate for special education students;
5. improve postschool outcomes for special education students by increasing the percentage of students who are employed or who participate in postsecondary education;
6. decrease suspension and expulsion rates for special education students; and

7. increase the percentage of trained personnel working with students with disabilities including, but not limited to, the following: (a) special education staff and related services providers; (b) paraprofessionals; and (c) general education teachers who work with students with disabilities.

B. SDE Responsibility

The SDE is required to collect, review, and analyze data on an annual basis to determine if the state is making adequate progress toward its performance goals and indicators. Based on this analysis, the SDE will revise its state improvement plan, as necessary, to address any lack of progress.

C. District Responsibility

Progress on the state's performance goals will only occur if districts are making efforts in these same areas. The IDEA 2004 requires districts to adopt policies that are consistent with the SDE's performance goals and indicators. Therefore, on an annual basis and as part of the self-evaluation requirements of the SDE's monitoring system, the district must:

1. ensure the data that it collects and reports to the SDE regarding special education students and personnel is accurate;
2. use data-based decision-making procedures to review and analyze district-level data to determine if the district is making progress toward the state's performance goals and indicators; and
3. develop, implement, and revise district improvement plans as necessary to make progress toward performance goals and indicators by:
 - a. using a planning process and a document that is specifically designed for special education; or
 - b. participating in a broad strategic planning process and then incorporating strategies or activities to address special education performance goals and indicators into the district's overall strategic plan.

D. Other Data

In addition to reporting data on performance goals and indicators, the district is also required to report information on disproportionality, the percentage of students served in special education, and the percentage of students served in the least restrictive environment (LRE).

Section 2. Statewide and Districtwide Assessment Reporting

A. SDE Responsibility

The SDE is required to make the following information available to the public on request:

1. the number of students with disabilities participating in regular assessments and the number of those student who were provided accommodations;
2. the number of students participating in Idaho Alternate Assessments; and
3. the performance results of students with disabilities, if doing so is statistically sound and does not disclose results identifiable to individual students.

Whenever the SDE reports information to the public on the assessment of students without disabilities, it must include the information in 1-3 above, as well as:

1. aggregated data that includes the performance of students with disabilities together with all other students; and
2. disaggregated data on the performance of students with disabilities.

B. District Responsibility

The district is accountable for appropriately including all students in statewide and districtwide assessments and for accurately reporting the results for all students. Therefore, on an annual basis and as part of the self-evaluation requirements of the SDE's monitoring system, the district must:

1. ensure the data that it collects and reports to the SDE is accurate;
2. use data-based decision-making procedures to review and analyze district-level data to determine if the district is making progress in including all special education students in the statewide assessment program and in consistently improving the level of performance by students with disabilities; and
3. develop, implement, and revise district improvement plans as necessary to make progress.

Section 3. Suspension and Expulsion Rates

A. SDE Responsibility

The SDE is required to collect and analyze discipline data, including data disaggregated by race and ethnicity, from districts to determine whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities:

1. among districts in the state; and
2. compared to such rates for students without disabilities within the district.

The SDE is also required to collect data concerning the number of students with disabilities who are removed to an interim alternative educational setting (IAES) including the acts precipitating these removals. This data must be collected by race, ethnicity, and disability category.

B. District Responsibility

On an annual basis and as part of the self-evaluation requirements of the SDE's monitoring system, the district must:

1. ensure the suspension and expulsion data that it collects and reports to the SDE is accurate;
2. use data-based decision-making procedures to review and analyze district-level discipline data to determine if significant discrepancies are occurring between the long-term suspension and expulsion rates for students with and without disabilities; and
3. develop, implement, and revise district improvement plans, policies, procedures, and practices as necessary to ensure that they are in compliance with the IDEA 2004 in relation to the following:
 - a. the development and implementation of IEPs;
 - b. the use of behavioral interventions; and
 - c. procedural safeguards.

Although not required by the IDEA 2004, the district may also want to determine if significant discrepancies are occurring in suspensions, expulsions, and the placement of students with disabilities in IAESs based on race, ethnicity, or disability category. The Office of Civil Rights (OCR) reviews such data.

Section 4. Disproportionality

A. SDE Responsibility

The IDEA 2004 requires the SDE to collect and analyze data to determine whether there is significant disproportionality of students identified as needing special education based on race. The state is required to report:

1. the number and percentage of students in each particular racial group who are identified as eligible for special education compared to the percentage of all students enrolled in the district from that same racial group;
2. the percentage of students in each racial group who are identified under particular categories of disability compared to the percentage of all students enrolled in the district from that same racial group; and
3. the percentage of students in each racial group who are placed in particular special education settings compared to the percentage of all students enrolled in the district from that same racial group.

B. District Responsibility

On an annual basis and as part of the self-evaluation requirements of the SDE's monitoring system, the district must:

1. ensure the data that it collects and reports to the SDE is accurate;
2. use data-based decision-making procedures to review and analyze district-level data on race to determine if significant disproportionality exists; and
3. review and, if appropriate, revise the district improvement plan, policies, procedures, and practices used in the identification or placement of students to prevent disproportionality based on race.

Section 5. Personnel

The district must ensure that personnel working with students with disabilities are fully licensed or certificated and highly qualified, whether they contract with or are employed by the district.

Appropriate Teaching Certification

Public school personnel must meet the appropriate certification requirements for position assignments. Complete certification standards for personnel providing special education or related services may be found in the handbook titled *Certification Standards for Professional*

School Personnel. This handbook is available from the SDE Bureau of Certification and Professional Standards.

Highly Qualified

In addition to being certified, special education teachers must meet the “highly qualified teacher standards” identified in the No Child Left Behind (NCLB) Act, although with slight modification. The standards apply to all special education teachers with the following exception: special education teachers who provide only consultative or collaborative support to highly qualified teachers need not be subject-credentialed (i.e., meet the highly qualified teacher standards), although they must be fully certified as special educators. No waivers or temporary certification qualifies.

1. Timelines to Meet “Highly Qualified Teacher Standards” for Veteran Teachers
 - a. Veteran teachers who teach core academic subjects¹ must be highly qualified by the end of the 2005-2006 school year, unless they teach in a small rural school as described in “b” below.
 - b. Veteran teachers working in middle schools or high schools located in small rural schools who teach multiple subjects and are highly qualified in one subject have until the end of the 2006-2007 school year to become highly qualified in the other subjects they teach. To determine whether a district qualifies as a small, rural district, check the Website at www.ed.gov/programs/reapsrsa/eligible04/index.html.
2. Ways of Meeting the Highly Qualified Teacher Standards
 - a. Both new and veteran special education teachers who teach core academic subjects exclusively to students assessed against alternate achievement standards (students with significant cognitive disabilities) may become highly qualified by either:
 - (1) meeting the NCLB Act requirement for elementary, middle school, or high school teachers who are new or not new; or
 - (2) meeting the elementary standards under the NCLB Act or, if instruction is above the elementary level, having subject matter knowledge appropriate to the level of instruction being provided (as determined by the state) which is needed to effectively teach to those standards.
 - b. If a special education teacher is teaching two or more core academic subjects exclusively to students with disabilities, the teacher may:

¹ Core academic subjects include English, reading, or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

- (1) meet the NCLB Act standards;
- (2) if not a new teacher, demonstrate a competence in all core academic subjects taught in the same manner as veteran teachers through the state highly objective uniform state system of evaluation (HOUSSE);
- (3) if a new teacher highly qualified in math, language arts, or science, he or she must demonstrate competencies in other core subjects through the HOUSSE standards within two years.

A. Certification and Licensure

The lists that follow are general guidelines only. They do not include every possible position or licensing situation. For more information call the SDE Bureau of Certification and Professional Standards at 208/332-6800.

1. The following special education and related services positions require individuals who are employed by a district to be certificated by the SDE and to meet any additional licensure requirements:
 - a. audiologist;
 - b. consulting teacher;
 - c. counselor;
 - d. director of special education;
 - e. early childhood special education teacher;
 - f. school psychologist;
 - g. special education teacher;
 - h. speech-language pathologist; and
 - i. supervisor/coordinator of special education.
2. Some special education service providers need both licensure in their area of expertise and certification from the SDE.
 - a. School nurses are certificated by the SDE and licensed by the State Board of Nursing.

- b. School social workers are certificated by the SDE and licensed by the Bureau of Occupational Licenses.
- 3. Some special education service providers must meet the licensure or certification requirements in their respective professions, but certification from the SDE is not required.
 - a. Occupational therapists and physical therapists are licensed by the State Board of Medicine.
 - b. Vocational education teachers are certificated by the Idaho Division of Professional-Technical Education.
 - c. Vocational rehabilitation counselors must meet national standards for Certified Rehabilitation Counseling (CRC) to be employed by the Idaho Division of Vocational Rehabilitation.

B. Shortage of Personnel

If there is a shortage of highly qualified personnel, the district must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students with disabilities.

A letter of authorization (LOA) and consultant specialists (CS) ends on June 30th, 2006. At that time vacant positions may be filled with personnel on alternate pathways to teaching.

Nothing in the IDEA 2004 creates a right of action on behalf of a student or class of students for failure to employ highly qualified staff.

C. Supervision of Staff

A teacher and/or a related service provider with appropriate certification or licensure who has been informed of his or her specific responsibilities related to a student's IEP has the primary responsibility to ensure the appropriate implementation of the IEP. The district has policies and procedures for the supervision and evaluation of all certificated/licensed or contracted employees.

The certificated/licensed teacher and/or related service provider will generally be responsible for the supervision of all paraprofessionals, assistants, and aides who provide direct services to students with disabilities. All paraprofessionals, assistants, and aides must have a supervision plan developed by a certificated or licensed professional.

D. Paraprofessionals, Assistants, and Aides

The district may employ paraprofessionals, assistants, and aides who are appropriately trained and supervised to assist in the provision of special education and related services to students with disabilities if they meet standards established by the SDE (see pages 147-156).

A special education paraprofessional working in a Title I schoolwide program must be highly qualified as demonstrated by the competencies listed in the NCLB Act.

1. Strategies to Assist Individuals in Meeting Paraprofessional Standards

The district must assist individuals in meeting the paraprofessional standards established by the SDE. A variety of strategies may be used to assist individuals in developing the skills necessary to meet the paraprofessional standards, including:

- a. participating in on-the-job training with follow-up provided by the supervising teacher;
- b. reading printed materials;
- c. participating in workshops;
- d. viewing videos;
- e. completing university course work;
- f. conducting personal research and studying; or
- g. training sponsored by the district.

2. Verifying that an Individual Has Met Paraprofessional Standards

The district will determine the means of verification that will be used to assess whether individuals working with students with disabilities have met the paraprofessional standards. Competence may be demonstrated in a variety of ways, such as:

- a. successful performance of duties;
- b. interview with the paraprofessional;
- c. observation;
- d. portfolio assessment;

- e. completion of a course or workshop; or
- f. verification from a former employer.

E. Professional Development Plan

To the extent the district determines it is appropriate, paraprofessional personnel may use the technical assistance and training activities offered by the SDE to fulfill part of the Standards for Paraprofessionals Supporting Special Needs Students. See pages 147-146 for a list of the standards.

Documents

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Standards for Paraprofessionals Supporting Special Needs Students

State and federal law requires paraprofessionals who assist in the provision of special education and related services have the skills and knowledge necessary to meet the needs of students with disabilities. To this end, the State Department of Education has developed “Standards for Paraprofessionals Supporting Special Needs”

Orientation and training in the paraprofessional’s first year of employment target entry-level standards to ensure that all paraprofessionals are knowledgeable, have the skills needed to support the programs to which they are assigned, and comply with legal and policy requirements. Training to address intermediate standards can extend over a two-year period and is planned according to the needs of the paraprofessional, as determined by the annual evaluation. Training to address advanced standards is not required.

Standards for Paraprofessionals Supporting Special Needs Students

(E) = Entry Level (I) = Intermediate (A) = Advanced

Principle 1: The paraprofessional has a basic knowledge of the discipline(s) taught and supports the teacher/provider in creating learning experiences that make the subject matter meaningful for students.

Knowledge

1. The paraprofessional has the basic academic skills needed to perform his or her assignments. (E)
2. The paraprofessional possesses basic educational terminology regarding students, programs, roles, and instructional activities. (I)

Disposition

1. The paraprofessional realizes how the application of learning is useful in life.

Performance

1. The paraprofessional demonstrates the academic skills needed to perform his or her assignment(s). (E)
2. The paraprofessional is able to use basic educational terminology to understand assigned tasks. (I)
3. The paraprofessional presents subject area content accurately to students. (I)

Principle 2: The Paraprofessional has a basic knowledge of how students learn and develop and assists in providing opportunities that support the students' intellectual, social, and personal development.

Knowledge

1. The paraprofessional understands which materials and activities are chronologically age appropriate. (I)

Disposition

1. The paraprofessional appreciates individual variations within each domain of development.

Performance

1. The paraprofessional uses developmentally-appropriate and age-appropriate strategies, equipment, materials, and technologies as directed by the teacher/provider. (I)

Principle 3: The paraprofessional knows that students differ in their approaches to learning and assists in creating instructional opportunities that are adapted to students with diverse needs.

Knowledge

1. The paraprofessional understands the impact that a disability or a combination of disabilities may have on a student's life. (E)
2. The paraprofessional knows about different methods that are used by teacher/providers to accommodate individual student learning needs. (I)
3. The paraprofessional has a basic knowledge of the strategies used to support the learning of students whose first language is not English. (I)
4. The paraprofessional has an awareness of common assistive technology devices used to accommodate student learner needs. (I)
5. The paraprofessional understands, in general terms, Idaho's special education requirements, including definitions, qualifications, and services. (I)
6. The paraprofessional knows about areas of exceptionality, such as learning disabilities, visual and perceptual difficulties, emotional and behavioral problems, physical and cognitive delays, and giftedness. (I)

7. The paraprofessional understands variations of beliefs, traditions, and values regarding disability across cultures and their effect on relationships among the student, the family, and school personnel. (A)

Disposition

1. The paraprofessional has an appreciation of programs for students with diverse needs.
2. The paraprofessional believes that all students can learn.
3. The paraprofessional believes his or her role includes advocating for, encouraging, motivating, and facilitating individual learning.
4. The paraprofessional respects students as individuals with differing backgrounds, skills, talents, and interests.
5. The paraprofessional is sensitive to community and cultural norms.

Performance

1. The paraprofessional uses his or her understanding of program requirements to carry out assignments. (E)
2. The paraprofessional persists in helping all students achieve success. (E)
3. The paraprofessional assists in adapting instructional strategies and materials according to student needs and ability levels. (I)
4. The paraprofessional assists the teacher/provider to maintain assistive/adaptive/medical services. (I)
5. The paraprofessional demonstrates the ability to carry out a variety of teacher/provider directed accommodations and adaptations to address the individual student's needs. (I)
6. The paraprofessional demonstrates proper lifting, carrying, and transferring techniques. (I)
7. The paraprofessional uses a number of teacher/provider directed strategies to support the learning of students whose first language is not English. (I)

Principle 4: The paraprofessional understands and uses a variety of instructional strategies to assist the teacher/provider.

Knowledge

1. The paraprofessional knows where to access a variety of learning resources. (E)
2. The paraprofessional understands that students from diverse experiential, cultural, economic, and language backgrounds may need different strategies for learning. (I)
3. The paraprofessional has a basic understanding of a variety of instructional techniques used by the teacher/provider. (I)
4. The paraprofessional understands basic instructional, remedial, and accelerated methods, techniques, and materials for teaching a variety of students. (A)

Disposition

1. The paraprofessional believes that a variety of instructional strategies may be necessary to meet individual needs.
2. The paraprofessional values flexibility and resourcefulness in supporting the teacher/provider in adapting and modifying instruction to address student needs.

Performance

1. The paraprofessional uses a variety of instructional techniques as modeled by the teacher/provider. (I)
2. The paraprofessional locates and maintains a variety of instructional resources as directed by the teacher/provider. (I)

Principle 5: The paraprofessional understands the impact of the educational environment on student learning, self-motivation, and positive social interaction and assists in creating a positive learning environment.

Knowledge

1. The paraprofessional understands district guidelines for protecting the safety, health, and well-being of students and staff (e.g., universal precautions for preventing illnesses and infections, the proper body mechanics for lifting students and heavy objects, CPR, and first aid). (E)
2. The paraprofessional understands how social groups function and influence people and how people influence groups. (I)

3. The paraprofessional recognizes factors and situations that are likely to promote or diminish intrinsic motivation and knows how to help students become self-motivated. (I)
4. The paraprofessional understands the goal of promoting student self-determination and self-advocacy skills and his or her role in supporting that goal. (I)
5. The paraprofessional has a general understanding of positive behavioral supports. (I)
6. The paraprofessional understands the demands of various classroom and nonclassroom environments on individuals with diverse learning needs. (A)

Disposition

1. The paraprofessional values the role of students in promoting one another's learning and recognizes the importance of peer relationships in establishing a climate of learning.
2. The paraprofessional recognizes the value of intrinsic motivation to students' lifelong growth and learning.
3. The paraprofessional values and understands student independence and the "dignity of risk."
4. The paraprofessional respects a wide diversity of beliefs, traditions, and values found across cultures and environments.
5. The paraprofessional is committed to helping students develop self-confidence and competence.

Performance

1. The paraprofessional carries out school behavior management policies and practices. (E)
2. The paraprofessional uses positive behavioral supports, crisis intervention, and restraint techniques consistent with the district/agency policy. (E)
3. The paraprofessional assists in establishing a positive climate in the classroom and participates in maintaining such a climate in the school as a whole. (E)
4. The paraprofessional plans for smooth transitions between activities and environments. (E)
5. The paraprofessional maintains a safe and effective learning environment for academic and nonacademic settings (e.g., lunchrooms, study halls, playgrounds, and buses). (E)
6. The paraprofessional supports a learning community in which individual differences are respected and valued. (E)

7. The paraprofessional assists in creating a learning community in which students assume responsibility for themselves and one another, participate in decision making, work collaboratively and independently, resolve conflicts, and engage in purposeful learning activities. (I)
8. The paraprofessional assists in modifying the learning environment to manage behavior. (I)
9. The paraprofessional implements behavioral prevention, intervention, and reinforcement plans that have been developed by the teacher/provider. (I)

Principle 6: The paraprofessional uses a variety of communication techniques, including verbal, nonverbal, and media in and beyond the classroom.

Knowledge

1. The paraprofessional is aware of effective communication styles. (I)
2. The paraprofessional understands how diversity affects community in the classroom. (I)
3. The paraprofessional has an understanding of verbal and nonverbal communication. (I)
4. The paraprofessional has knowledge of the basic functions of multimedia technology (e.g., computer, video, recorder, projector). (I)
5. The paraprofessional has knowledge of basic computer software and functions, e-mail, and the Internet. (I)
6. The paraprofessional knows strategies and techniques that facilitate communication for students with diverse needs. (A)

Disposition

1. The paraprofessional values the ways in which people seek to communicate and encourages various modes of communication in the classroom.

Performance

1. The paraprofessional effectively communicates with team members. (E)
2. The paraprofessional is a thoughtful and responsive listener. (E)
3. The paraprofessional demonstrates sensitivity to cultural and other differences in communication methods (e.g., appropriate use of eye contact, interpretation of body

language and verbal statements, acknowledgement of and responsiveness to different modes of communication and participation). (I)

4. The paraprofessional uses a variety of media communication tools, including audiovisual aids and computers, to enrich learning opportunities. (I)

Principle 7: The paraprofessional implements teacher/provider designed instructional plans based upon knowledge of subject matter, students, the community, and curriculum goals.

Knowledge

1. The paraprofessional understands that instruction is more effective when designed around student strengths, interests, and abilities. (I)
2. The paraprofessional knows that a variety of elements (instructional materials, individual student interests, needs, aptitudes, and community resources) are considered when planning instruction for students. (I)
3. The paraprofessional understands that curriculum and instructional planning are based on learning theory and child and adolescent development. (A)

Disposition

1. The paraprofessional believes that plans must always be open to adjustment and revision, as directed by the teacher/provider, based on student needs, student input, and changing circumstances.
2. The paraprofessional values planning as a collegial and collaborative activity.
3. The paraprofessional values both long-term and short-term planning.

Performance

1. The paraprofessional follows teacher/provider written and verbal plans, seeking clarification as needed. (E)

Principle 8: The paraprofessional supports the teacher/provider in evaluating the intellectual, social, and physical development of the student.

Knowledge

1. The paraprofessional understands the purposes of formative and summative assessment and evaluation. (I)

2. The paraprofessional realizes the need to use multiple strategies to assess individual student progress. (I)
3. The paraprofessional understands the distinctions in the roles of teachers/providers, other licensed district/agency professionals, and paraprofessionals in assessing student strengths and needs. (I)

Disposition

1. The paraprofessional values ongoing assessment as essential to the instructional process and recognizes that many different assessment strategies, accurately and systematically used, are necessary for monitoring and promoting student learning.

Performance

1. The paraprofessional assists teachers/providers with maintaining student records required by the state or the district. (E)
2. The paraprofessional gathers information by using informal and functional assessment methods under teacher/provider direction. (I)
3. The paraprofessional objectively shares relevant information about student performance to assist the teacher/provider in the planning process. (I)
4. The paraprofessional assists in providing assessment accommodations and adaptations as designed by the teacher/provider. (I)
5. The paraprofessional administers formal assessments when given appropriate training and supervision. (A)

Principle 9: The paraprofessional engages in continued professional improvement toward an identified goal.**Knowledge**

1. The paraprofessional has an awareness of his or her professional strengths and needs. (E)
2. The paraprofessional is aware of the personal biases and differences that affect job performance. (I)
3. The paraprofessional is knowledgeable about resources that provide opportunities for professional growth. (I)

Disposition

1. The paraprofessional embraces lifelong learning.
2. The paraprofessional is committed to ongoing reflection, assessment, and learning as a process.
3. The paraprofessional is committed to seeking, developing, and continually refining practices.
4. The paraprofessional values constructive feedback as a learning tool.
5. The paraprofessional values competency and integrity.

Performance

1. The paraprofessional uses self-reflection as a means of improving job performance. (E)
2. The paraprofessional asks for and accepts feedback from the teacher/provider. (E)
3. The paraprofessional documents progress toward his or her professional development. (I)
4. The paraprofessional participates in meaningful professional development opportunities in order to demonstrate current, effective practices. (I)

Principle 10: The paraprofessional interacts in a professional, effective manner with colleagues, parents, and other members of the community to support students' learning and well-being.

Knowledge

1. The paraprofessional understands the distinction between the roles of all team members in support of student learning. (E)
2. The paraprofessional understands the relationships among school personnel, families, and the larger community and how such partnerships foster student learning. (E)
3. The paraprofessional understands the common concerns that the parents of students with diverse needs may have. (E)
4. The paraprofessional knows how to respond respectfully to a parent, the community, or another educator in conflict situations. (E)
5. The paraprofessional knows the rights and responsibilities of parents, students, teachers, professionals, and schools as they relate to students with learning needs. (E)

6. The paraprofessional knows signs of emotional distress, child abuse, substance abuse, and neglect in students and how to follow the procedures to report known or suspected abuse or neglect to the appropriate authorities. (E)
7. The paraprofessional understands the expectations for professional conduct, policies, procedures, and laws with regard to student and parent rights. (E)

Disposition

1. The paraprofessional respects the need for beneficial relationships among families, school personnel, and community members.
2. The paraprofessional is concerned about all aspects of the student's well-being and is alert to signs of difficulties.
3. The paraprofessional respects the dignity, rights, and privacy of students and families.
4. The paraprofessional is respectful of distinctions among the roles and responsibilities of paraprofessionals, professionals, and other team members.

Performance

1. The paraprofessional respects student privacy, student rights, and the confidentiality of information. (E)
2. The paraprofessional effectively collaborates with team members. (E)
3. The paraprofessional follows teacher/provider instructions and honors team decisions in daily practice. (E)
4. The paraprofessional provides positive representation of the student, school, and district. (E)
5. The paraprofessional develops a rapport with students (e.g., talks with and listens to students) is sensitive and responsive to clues of distress, and seeks outside help as needed. (E)
6. The paraprofessional demonstrates professional conduct in accordance with district policies and state laws. (E)
7. The paraprofessional exercises objective and prudent judgment. (E)
8. The paraprofessional follows policy regarding reporting suspected child abuse, neglect, or threat of harm to the student or others. (E)

Chapter 11
PROCEDURAL SAFEGUARDS

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Chapter 11

PROCEDURAL SAFEGUARDS

This chapter reflects changes in procedural safeguards, also known as special education rights, as a result of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004).

Section 1. Procedural Safeguards Notice

A parent/adult student has specific procedural safeguards given to him or her by the IDEA 2004 and state law. Each district has a document titled *Procedural Safeguards Notice* that is provided to parents/adult students which contains a full explanation of the special education rights. The *Procedural Safeguards Notice* must include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner.

A. *Procedural Safeguards Notice Contents*

The following table lists various topics contained in the *Procedural Safeguards Notice* and identifies what chapter in this manual provides more information about each topic.

Topic	Chapter
1. parental consent	11
2. prior written notice	11
3. access to educational records	11
4. independent educational evaluation (IEE)	11
5. the opportunity to present and resolve complaints, including— a. the time period in which to make a complaint b. the opportunity for the district to resolve the complaint c. the availability of mediation	13
6. the student's placement during pendency of due process proceedings	13
7. procedures for students who are subject to placement in an interim alternative educational setting (IAES)	12
8. requirements for unilateral placement by parents of students in private schools at public expense	9
9. due process hearings, including requirements for disclosure of evaluation results and recommendations	13
10. civil actions, including the time period in which to file such actions	13
11. attorney fees	13

B. When the *Procedural Safeguards Notice* Is Provided

The district will provide a *Procedural safeguards Notice* that includes a full explanation of the special education rights afforded the parent/adult student only once per year, except that a copy will be given to the parent/adult:

1. upon an initial referral or parent/adult student request for evaluation;
2. upon the first occurrence of a filing of a due process hearing or an administrative complaint;
3. upon request by the parent.

A *Procedural Safeguards Notice* suitable for copying can be found on pages 183-200.

Section 2. Domestic Considerations**A. Parent****1. Definition**

The term “parent” means:

- a. a natural, adoptive, or foster parent of a child;
- b. a guardian (but not the state if the child is a ward of the state);
- c. an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives;
- d. an individual who is legally responsible for the child’s welfare; or
- e. a surrogate parent who has been appointed by the district.

2. Determining Who Has Parental Rights

In determining who has parental rights, individuals should be considered in the following order of priority:

- a. a natural parent who retains guardianship;
- b. a person who has legal documentation (guardianship, power of attorney, custody agreement) of being responsible for the student’s welfare;

- c. a grandparent, stepparent, other relative, or foster parent with whom the student lives and who is acting as a parent; or
- d. a surrogate parent appointed by the district to represent the student's interests in educational decisions.

B. Surrogate Parent

1. Definition

A "surrogate parent" is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA 2004 in any of the following circumstances:

- a. No parent can be identified or located for a particular student.
- b. The student is a ward of the state.
- c. The student is an unaccompanied homeless youth.

The surrogate parent has the same rights as a natural parent throughout the special educational decision-making process.

2. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district's special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

- a. A parent cannot be identified.
- b. A parent cannot be found after reasonable efforts to locate the parent.
- c. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a child who is a ward of the state, the judge-appointed surrogate may make decisions regarding the child's education, including special education, provided he or she meets the criteria for a district-appointed surrogate.
- d. The student is a homeless youth who is unaccompanied.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the natural parent is available but chooses not to participate. When a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth in item 3 below. The district will make reasonable efforts to assign a surrogate within 30 calendar days after it determines that the student needs a surrogate.

3. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement, and the provision of FAPE. The surrogate parent must:

- a. Have knowledge and skills that ensure effective representation.
- b. Not have an interest that conflicts with the interest of the student.
- c. Meet one of the following conditions:
 - (1) Is not be an employee of the SDE, the district, or any other agency that is involved in the education or care of the student; or
 - (2) Is not an employee of a nonpublic agency that provides educational care for the student.

Note: A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

C. Adult Students and the Transfer of Rights

An “adult student” is a student who is at least 18 years of age to whom special education rights have transferred under the IDEA 2004 and Idaho Code.

1. Discussion of the Transfer of Rights: Not later than the student’s 17th birthday, the IEP team must discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns 18 years of age unless:
 - a. the IEP team determines that the student does not have the ability to make informed decisions with respect to his or her educational program; or
 - b. a parent has obtained legal guardianship including the scope of educational matters.
2. Basis for Denial of Transfer: During the IEP meeting to discuss the transfer of rights, the IEP team will use the following as the basis for any denial of the transfer:
 - a. Evaluation data, test results, written reports, teacher observation, education records, and parent input, including whether the parent intends to seek guardianship.
 - b. Answers to the following questions:
 - (1) Is the student capable of understanding his or her rights?

- (2) Is the student capable of exercising his or her rights?
 - (3) Is the student capable of understanding the consequences and impact of his or her decisions?
3. Following a Determination Concerning the Transfer of Rights: When the student's special education rights transfer at age 18, the parent and student will be informed that rights have transferred. The IEP must contain a statement referring to the transfer (or not) of rights:
 - a. If the team determines that there is no relevant information about the student to prohibit the transfer of rights at age 18, the student's IEP must contain a statement that the student has been informed that special education rights will transfer to him or her.
 - b. If the IEP team determines that the student lacks the ability to provide informed consent with respect to his or her educational program, a statement will be included in the IEP indicating that the parent, or other individual if the parent is not available, will retain all special education rights after the student reaches age 18.
4. Written Notice and IEP Team Participation: The right to receive written notice is always retained by *both* the parent and adult student. The parent will continue to receive copies of any notices, including written notices and invitations to IEP team meetings, that the adult student receives. While a parent has the right to receive notices, only the adult student has the right to make decisions regarding his or her educational program.

If rights have transferred, the adult student or district can invite the parent to IEP team meetings because he or she is knowledgeable about the student.
5. Revoking a Transfer of Rights: There is nothing in federal or state law that prohibits the IEP team from changing its decision later, based on new information and input. Under state law, a parent can provide legal documentation of a student's incompetence *after* the student reaches age 18.

D. Emancipated or Married Minors

Idaho law does not provide for the emancipation of minors. However, minors who have been emancipated by a court of law in another state are considered an adult in Idaho. Emancipated minors should be able to provide the legal court document awarding them the power and capacity of an adult. A student under age 18 who claims to be an emancipated minor but is unable to provide documentation should be assigned a surrogate parent by the district if a parent cannot be located.

Students under the age of 18 who are married to an adult, 18 years or older, are not emancipated minors in Idaho and do not have the power and capacity of an adult student. Instead, the spouse acts as the guardian of the student regarding legal rights and responsibilities.

E. Ward of the State

The term “ward of state” means a child who, as determined by the state where the child resides, is a foster child or a ward of the state *or* is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 2A on page 160.

F. Child Custody

1. Definitions of Custody

The following definitions of custody are used by Idaho courts in divorce proceedings:

- a. **Joint custody** means an order awarding custody of a minor child to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child frequent or continuing contact with both parents. A court may award either joint physical custody or joint legal custody, or both. If the court has declined an order awarding joint custody, the court order shall state in the decision the reason for denial of joint custody.
- b. **Joint physical custody** means awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents. The actual amount of time with each parent is determined by the court. Generally, one of the parents is awarded primary physical custody.
- c. **Joint legal custody** means that the parents or parties are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of a child. In Idaho, parents have joint legal custody unless the rights one or both parents have been terminated.

2. Conflicts Between Parents Who Have Joint Custody

- a. **Custody questions:** When it is known that a custody question exists that involves the relevant legal status of one or both parents of a student, the district will ask the parent(s) to furnish a copy of the pertinent court order or decree, if one exists, to clarify the question at issue. School personnel will abide by the most recent court order or decree.

When district personnel receive conflicting information about custody, they will (a) initially follow the instructions of the parent with whom the child currently resides and (b) request a certified court document to clarify the custody issue.

- b. **Conflicting instructions:** When parents who have joint legal custody give conflicting instructions, the district’s obligation is to inform the parents that any action proposed or refused will be based on the needs of the student and in

accordance with the IDEA 2004 requirements. Both the district and either parent have options under the IDEA 2004 to resolve disagreements, including SDE mediation and due process hearings.

- c. **Access to records:** A parent who does not have primary physical custody has the same right to access records and to participate in special education decision making as does the parent with primary physical custody, unless otherwise stipulated by a court. Idaho Code states, “Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child’s custodial parent.” Another provision of the law allows the parent with primary physical custody to request in writing that a minor child’s address be deleted from any record to prohibit the other parent from learning the child’s address by having access to school records.

Section 3. Informed Consent

A. Definition

Consent is written approval given by a parent/adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information must be provided in the native language or mode of communication of the parent/adult student. The parent/adult student must be informed that the approval is voluntary and may be revoked at any time prior to the action. Consent is indicated by the parent’s/adult student’s signature.

B. Actions Requiring Consent

The following actions require the district to obtain written consent. Some of the actions that require written consent from the parent/adult student also require prior written notice from the district.

1. Informed written consent *and* written notice are required when:
 - a. Conducting assessments as part of an initial evaluation to determine whether a student is eligible for special education.
 - b. Conducting any assessment for reevaluation. This includes any assessments that are conducted after a student has been determined eligible for special education. If a specific assessment was not listed on the *Consent for Assessment* form, then the district must secure written consent again in order to conduct that particular assessment.

- c. Initially providing special education and related services to a student with a disability.
2. Informed written consent only is required when:
 - a. Using an individual family service plan (IFSP) instead of an IEP for students ages 3 through 5.
 - b. Disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations. The written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.
 - c. Accessing private insurance to pay for services listed in the IEP.

C. When Consent Is Not Required

The district is not required to obtain informed consent in the following situations:

1. When a review of existing data is part of an evaluation or a reevaluation
2. When tests are administered to both general and special education students in a grade or class and consent is not required for all students.
3. When teacher or related-service-provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals and benchmarks/objectives on the IEP.
4. When a disclosure of personally identifiable information to persons authorized to have access under FERPA.
5. When the district bills Medicaid. However, the parent/adult student must be informed of the frequency, amount, and type of services that the district will be submitting to Medicaid for reimbursement.
6. When an IEP team reviews and revises a student's IEP. However, the parent/adult student may file a written objection if he or she disagrees with all or part of the changes to the IEP.

D. Refusal to Give Consent

At times, a parent/adult student may refuse to give written consent for an assessment or the release of information that the district believes is necessary to ensure FAPE. The district may continue to pursue the action by using SDE mediation and/or requesting a due process hearing. If

the hearing officer determines that the action is necessary, and the parent/adult student does not appeal the decision, the district may proceed with the proposed action.

The district must secure written consent for the provision of special education and related services. There is no mechanism available to overturn a parent's/adult student's decision to *not* provide written consent or failure to respond to a request for such consent. In such an instance, the district cannot be charged with failing to provide FAPE to the student and is not required to convene an IEP meeting or develop an IEP for special education or related services.

E. Failure to Respond to a Request for Consent Regarding Reevaluation Assessment

When a parent/adult student fails to respond to reasonable measures taken by the district to obtain written consent to determine continued eligibility, the district may proceed with the evaluation. The district must have a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment.

F. Revoking Consent

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked only before the action occurs. If consent is revoked, the district may continue to pursue the action by using SDE mediation and/or requesting a due process hearing (this does not include the initial provision of special education and related services). If the hearing officer determines that the action for which consent is sought is necessary, and the decision is not appealed, the district may proceed with the action without the written consent of the parent/adult student. Consent must be revoked in writing.

Section 4. Written Notice

A. Definition

Written notice is the act of informing a parent/adult student, in writing within a reasonable amount of time, before the district proposes or refuses to initiate or change the student's identification, the evaluation, educational placement, or provision of FAPE.

B. Criteria for Written Notice

1. Written notice must be provided in a reasonable amount of time before implementing the proposed action (approximately 10 days).
2. Written notice must be in a language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent/adult student unless it is clearly not feasible to do so. If the native language or

other mode of communication is not a written language, the district must take steps to ensure the following:

- a. The notice is translated orally or by other means in the native language or other mode of communication.
- b. The parent/adult student understands the content of the notice.
- c. There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

When a parent/adult student disagrees with the district's written notice of a proposed or refused action, he or she can attempt to remedy the dispute using SDE mediation, formal complaint procedures, or due process hearing procedures afforded by the IDEA 2004. In addition, the parent/adult student may have the right to prevent the district from taking action by filing a written objection with the district.

C. Written Notice Is Required

1. The district must provide written notice before proposing to initiate or change the following:
 - a. identification of the student;
 - b. any assessments for initial evaluation or reevaluation;
 - c. educational placement; or
 - d. the provision of FAPE.
2. After the district's decision to refuse a parent/adult student's request to initiate or change the identification, assessment, placement, or provision of FAPE.
3. If the district refuses to convene an IEP meeting at the request of a parent/adult student.
4. When the evaluation team determines that additional assessments are not required during a reevaluation to determine whether the student continues to meet eligibility criteria, the district must provide written notice to the parent/adult student of the decision and the reasons for that decision. The parent/adult student must also be informed of his or her right to request assessments when necessary to determine continued eligibility.

D. Written Notice is Not Required

The district is not required to provide written notice in the following situations:

1. When reviewing existing data as part of an evaluation or a reevaluation. However, the parent/adult student must be afforded the opportunity to participate in the review of existing data.
2. When tests are administered to both general and special education students in a grade or class.
3. When teacher or related service provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals and benchmarks/objectives on the IEP.

E. Content of Written Notice

The content of written notice is intended to provide the parent/adult student with enough information so that he or she is able to fully understand the district's proposed action or refused action and to make informed decisions, if necessary. The written notice must include the following:

1. a description of the action proposed or refused by the district;
2. an explanation of why the district proposes or refuses to take the action;
3. a description of any other options the IEP team considered and the reasons why those options were rejected;
4. a description of each procedure, assessment, record, or report that the district used as a basis for the proposed or refused action;
5. a description of any other factors relevant to the proposed or refused action;
6. a statement that the parent/adult student has special education rights and a description of how to obtain a copy of the *Procedural Safeguards Notice*; and
7. sources to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

F. Objection to District Proposal

If a parent/adult student disagrees with an IEP change or placement change that is proposed by the district, he or she may file a written objection to all or part of the proposed change. The district will respond as follows:

1. If the objection is postmarked or hand delivered within 10 calendar days of the date the parent/adult student received the written notice, the changes to which the parent/adult student objects cannot be implemented.

2. If a proposed change is being implemented during the 10-day period and an objection is received, the implementation of that change must cease.
3. If an objection is made after 10 calendar days, the district may continue to implement the change, but the parent/adult student retains the right to exercise safeguard procedures under the IDEA 2004.

The parties may resolve a disagreement use informal methods, such as additional IEP team meetings, IEP facilitation, and SDE mediation. If these informal attempts fail, the district may request a due process hearing regarding the proposed change. A parent's/adult student's written objection to an IEP or placement change cannot be used to prevent the district from unilaterally placing the student in an IAES in accordance with the IDEA 2004 procedures for discipline of a student.

A parent/adult student who needs assistance to file a written objection will be referred by the district or SDE to Idaho Parents Unlimited (IPUL) or other relevant sources.

Section 5. Confidentiality and Access to Records

The district must collect, use, and maintain information about a student to make appropriate decisions concerning special education and the provision of FAPE. A student's special education case manager, usually the special education teacher, should organize all relevant records specific to district guidelines and the IDEA 2004 requirements.

The IDEA 2004 and FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes also provide for the right to review and inspect records.

A. Definition

A "record" is defined as personally identifiable information directly related to the student and maintained by the district. A student record can be written or electronic.

1. The term "record" may include, but is not limited to, the following:
 - a. identifying data (name, address, parents, siblings, Social Security number, list of personal characteristics making identification possible);
 - b. academic work completed (courses taken, transcript);
 - c. level of achievement (grades, portfolios, performance assessments, scores on standardized achievement tests, etc);
 - d. attendance data;

- e. scores and protocols of standardized intelligence, aptitude, and psychological tests;
 - f. records of teachers, counselors, medical personnel, and psychologists working directly with a student if disclosed to others;
 - g. interest inventory results;
 - h. observations and verified reports of serious or recurring behavior patterns;
 - i. videotapes or audiotapes;
 - j. health data including medical assessments;
 - k. family background information;
 - l. transportation records; and
 - m. student records maintained by agencies and individuals contracting with the district.
2. The term “record” does not include:
- a. records of instructional, supervisory, ancillary, and administrative personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
 - b. records created by law enforcement units of schools and maintained separately for non-educational purposes;
 - c. employment records about a student who is employed by a school or district; and

B. Protection of Records

The district must prevent unauthorized disclosure of personally identifiable information pertaining to students with disabilities. “Disclosure” is the release, transfer, or other communication of education records or of personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic.

To ensure protection of records, the district must do the following:

- 1. Obtain written and dated consent from the parent/adult student before disclosing personally identifiable information:
 - a. to unauthorized individuals; or

- b. for any purpose except as required by the IDEA 2004, Part B.

In the event that a parent/adult student refuses consent for disclosure, SDE mediation may be offered as a voluntary way of resolving the disagreement

2. Designate and train a records manager to assure security of confidential records for students with disabilities.
3. Maintain a log of requests for and access to education records if the disclosure is not to:
 - a. a parent/adult student;
 - b. a school employee with a legitimate educational interest;
 - c. a party seeking designated directory information; or
 - d. a party receiving the records as directed by a federal jury or other subpoena ordering no one to disclose the existence of the request to access records.

This log includes the name, agency affiliation, date, and purpose for accessing the records. A log documenting denials for records and partially fulfilled requests should also be maintained.

4. Maintain, for public inspection, a current listing of names and positions of employees who have access to personally identifiable information.
5. Establish procedures to ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
6. Ensure that, if any education record includes information on more than one student, a parent/adult student will only be allowed to inspect, review, or be informed about the record of the student at issue.
7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality. All staff members, even those who do not have access to special education records, should be informed about what is considered appropriate and inappropriate access to and use of information within the records. The district may maintain a record of the training provided—including the name of the person or persons providing the training, dates of the training, those attending, and the subjects covered—for the purpose of documenting that new staff members have been trained as soon as possible after they have been hired.

C. Access to Records

The district must:

1. Annually notify the parents of all students, including students with disabilities currently in attendance, of their rights under FERPA. The notice must include all of the following:
 - a. procedures for exercising the right to inspect and review education records;
 - b. procedures for requesting amendment of records; and
 - c. a specification of criteria for determining who constitutes a school official or employee in the district and what constitutes a legitimate educational interest.
2. Permit a parent/adult student, or his or her representative, to inspect and review any record relating to educational matters that is collected, maintained, or used by the district. The district will presume that a custodial or noncustodial parent has the authority to inspect and review a record relating to his or her child unless there are legal documents limiting access to those records under state law. A minor child's address will be deleted from any record if requested in writing by a custodial parent to prohibit a noncustodial parent from learning the address simply by having access to the school records.

The district will make records available to a parent/adult student for review:

- a. without delay but no later than 45 days after the request;
- b. before any meeting regarding an IEP; and
- c. at least 5 business days before any due process hearing.

The district should note that test protocols may be part of a student's educational record. Test publishers require districts to maintain the integrity and validity of tests. Parents or others interested in a student's test results are allowed to view the child's responses to test items, but only if the information is shared in the presence of a person qualified to explain the results and meaning of the various items and data contained in the protocol.

3. Upon request, provide a parent/adult student with a list of the types of education records the school collects, maintains, or uses and where they are kept.
4. Respond to any reasonable request made by a parent/adult student for an explanation and interpretation of a record.
5. Provide a copy of education records if a parent/adult student would otherwise be unable to exercise his or her right to inspect and review those records. An education record

may include test protocols. Even though it is important that standardized test items are protected from general release so that tests remain usable and valid, FERPA and the IDEA 2004 allow copies in these unique situations. A fee may be charged for the copies, but not to search for or retrieve information. The district will publish a schedule of fees it intends to charge.

6. Always provide a parent/adult student a copy of the following IDEA 2004 requirements without cost:
 - a. any IEP; and
 - b. any documentation of identification and eligibility.

D. Disclosures Not Requiring Consent

Consent is generally required to disclose personally identifiable information to others. However, consent is not required when:

1. A school official or employee has a legitimate educational interest to access the records.
2. A representative of the Federal Comptroller General, the United States Department of Education, or the State Department of Education (SDE) accesses records necessary for an audit or evaluation of a federal program or for enforcement or compliance with federal regulations.
3. A student transfers to another school or school system in which the student intends to enroll unless a district has adopted a procedure requiring consent. However, the parent/adult student should be notified of the request for records at the last known address of the parent/adult student unless he or she initiated the request.
4. The health and safety of the student or other individuals is in jeopardy because of an emergency.
5. The disclosure concerns the juvenile justice system's ability to effectively serve the student or the ability to respond to court orders or subpoenas, as specified in state law. The district will make a reasonable effort to notify the parent of the court order in advance of compliance, unless the subpoena specifically states that it is not to be disclosed.
6. An organization conduct studies on behalf of education agencies or institutions under specified FERPA criteria.
7. The disclosure is in connection with an application for financial aid and is necessary to determine eligibility for the aid, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid ("financial aid" means a payment of funds to

an individual that is conditioned on the individual's attendance at an education agency or institution).

8. The district has designated information as "directory information" under the conditions in FERPA.

E. Destruction of Records

The district will maintain education records, including eligibility documentation and IEPs, for at least 5 years after disenrollment from the district to demonstrate fiscal accountability and program compliance with the IDEA 2004 requirements. The district must inform a parent/adult student when personally identifiable information collected, maintained, or used is to be destroyed because the information is no longer needed to provide educational services to the student.

The parent/adult student must be informed of the personally identifiable information that the district intends to destroy and that the information will be destroyed no earlier than 45 calendar days from the date of the notice. The parent/adult student must also be informed of the procedure to follow if he or she wishes to formally object to the destruction of the information and wants the records sent to him or her.

Written records of individual students are confidential and must be shredded or burned under supervision of the staff member responsible for the records if not released to the parent/adult student. The records manager should maintain a log that documents the date of destruction or release of records.

A permanent record of the student's name, address, phone number, grades, classes attended, immunization records, test scores, attendance record, grade level, and year completed may be maintained by the district without a time limitation. Any other personally identifiable information must be destroyed at the request of the parent/adult student if it is older than 5 years and no longer needed to provide special education. When informing the parent/adult student of his or her rights, the district should remind the parent/adult student that the records might be needed for Social Security benefits or other purposes in the future.

F. Request for Amendment of Records

A parent/adult student may request that the district amend the student's records if he or she believes that information collected, maintained, or used in the education record is inaccurate, misleading, or in violation of the privacy or other rights of the student. The district will use the following procedure:

1. The district, within a reasonable period of time—not to exceed 45 days of receipt of the request—must decide whether to amend the record. If the district refuses to amend the record, the parent/adult student must be informed of the refusal and be advised of the right to and procedure for requesting a district hearing. A district hearing is an informal hearing that does not have all the requirements of a due process hearing.

2. If a district hearing is requested and the district decides that the information is inaccurate, misleading, or in violation of the student's rights, the district must amend the record and inform the parent/adult student in writing.
3. If a district hearing is requested and the district decides the information is accurate and does not violate the student's rights, the district must inform the parent/adult student that he or she may place a statement in the record. This statement may comment on the information in the record or set forth the parent's/adult student's reasons for disagreeing with the district. Any statement placed with a record must accompany the record for as long as the district maintains the record. If the district discloses the record to any person, the district must also disclose the statement.

G. District Hearings on Procedures for Records

If a parent/adult student requests a district hearing on a proposed amendment of education records, the district will follow these procedures:

1. The district hearing will be held within a reasonable amount of time after receiving the request. The district will give the parent/adult student notice of the date, time, and place reasonably in advance of the hearing.
2. The district's hearing will be conducted by an employee of the district or other individual who does not have a direct interest in the outcome of the hearing. The district will give the parent/adult student a full and fair opportunity to present evidence relevant to the issues raised. The parent/adult student may, at his or her own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
3. The district will make its decision in writing within a reasonable period of time after the hearing. The decision must be based solely on the evidence presented at the district's hearing and must include a summary of the evidence and the reasons for the decision.

H. Students' Rights

When special education rights transfer to a student under the IDEA 2004 and Idaho Code, the FERPA rights regarding education records also transfer to the student. The district must inform the adult student and the parent that both the IDEA 2004 and FERPA rights regarding education records transfer.

Section 6. Independent Educational Evaluations

A. Definition

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the district responsible for the education of the student in question.

B. Right to an IEE

1. A parent/adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the district. The parent/adult student is entitled to only one IEE at public expense for each district evaluation.
2. The parent/adult student has the right to an IEE at his or her own expense at any time, and the IEP team must consider the results.
3. The parent/adult student is not automatically entitled to have additional assessments beyond those determined necessary for an evaluation. However, if the parent/adult student is interested in additional or different assessments and the district refuses to provide them, he or she may pursue additional assessments through a due process hearing request. In addition, the district may initiate a due process hearing to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the evaluation conducted by the district was appropriate, the parent/adult student still has the right to an IEE but at his or her own expense.
4. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the district was not appropriate.

C. Procedures for Requesting an IEE

If a parent/adult student requests an IEE at public expense, the district may ask why he or she disagrees with the evaluation obtained by the district, but the district cannot require an explanation. Then, the district must give the parent/adult student the criteria under which an IEE can be obtained. The district's IEE criteria must include the following information:

1. the location for the evaluation;
2. the required qualifications of the examiner;
3. the eligibility requirements for the specific disability categories; and
4. the maximum allowable charges for specified assessments to eliminate unreasonably excessive fees, including travel costs for necessary services not available in the community.

Except for the criteria listed above, the district may not impose other conditions or timelines if doing so would be inconsistent with the parent's/adult student's right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

A parent/adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's cost criteria. If an IEE that falls outside the district's cost criteria is justified, that IEE will be publicly funded.

D. District Responsibilities Following IEE Requests

1. If a parent/adult student requests an IEE at public expense, the district must do one of the following without unnecessary delay:
 - a. Provide the district's IEE criteria and information about where an IEE may be obtained.
 - b. Offer SDE mediation to try to resolve differences.
 - c. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the parent/adult student may pursue an IEE, but at his or her own expense.
2. If a parent/adult student asks the district to pay for an IEE that has already been obtained, the district must do one of the following:
 - a. Pay for the IEE if it meets the criteria for publicly funded IEEs. If the district believes that its evaluation was appropriate but agrees to pay for the IEE, the district should state this in writing within the same document in which it agrees to pay.
 - b. Request SDE mediation.
 - c. Request a due process hearing within 10 days of the billing to show that the evaluation obtained by the parent/adult student did not meet the criteria for a publicly funded IEE.
 - d. Request a due process hearing within 10 days of billing to demonstrate that the district's evaluation was appropriate. The district does not have to pay for an IEE if the hearing officer finds for the district.

E. Consideration of the IEE Results

If a parent/adult student obtains an IEE and makes that evaluation available to the district, the results must be considered by the district in any decision made with respect to the provision of

FAPE. The results may also be presented as evidence at a hearing regarding the student. This is true regardless of whether the IEE is at the expense of the parent/adult student or district.

The results of an IEE cannot be the sole determining factor for eligibility. The evaluation team has the responsibility to use existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA 2004.

Documents

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Procedural Safeguards Notice

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) entitles all eligible children with disabilities to a free appropriate public education (FAPE). As a parent of a child with a disability (or as an adult student with a disability if rights have transferred to you) the IDEA 2004 and state law provide you with specific procedural safeguards or rights. This *Procedural Safeguards Notice* gives you an explanation of your rights in the following outline:

Section	Title
1.	Consent
2.	Written Notice
3.	Evaluation/Reevaluation Procedures
4.	Independent Educational Evaluation (IEE)
5.	Individualized Education Program (IEP) and Least Restrictive Environment (LRE)
6.	Resolving Disagreements about the Education Program
	6.a. IEP Facilitation
	6.b. Mediation Provided by the SDE
	6.c. Formal Complaint
	6.d. Due Process Hearing
	6.e. Expedited Due Process Hearing
7.	General Provisions for Discipline under the IDEA 2004
8.	Procedures for Disciplinary Placement in an Interim Alternative Educational Setting (IAES)
9.	Attorney Fees
10.	Requirements for Unilateral Placement in a Private School/Facility at Public Expense
11.	Education Records
12.	Using Public and Private Insurance Funds to Provide FAPE

Your school district can provide more information on these rights. If you have questions, you should speak to the special education teacher, school principal, director of special education, or superintendent in the district.

For further explanation on any of these rights you may also contact:

State Department of Education
Bureau of Special Population Services
P.O. Box 83720
Boise, Idaho 83720-0027
208/332-6910
TT: 800/377-3529

Idaho Parents Unlimited, Inc. (IPUL)
600 N. Curtis, Suite 145
Boise, Idaho 83705
800/242-4785

Comprehensive Advocacy, Inc. (Co-Ad)
4477 Emerald St., Suite B-100
Boise, Idaho 83706
V/TT: 208/336-5353
800/432-4601

1. Consent

Consent, indicated by your signature, means that you have been fully informed of and understand and agree to certain educational activities or actions before they take place. The request for consent will describe the action and list records, if any, that will be released and to whom. Your consent is voluntary and may be revoked at any time prior to the action.

You have the right to provide written consent:

1. Before assessments take place when the district evaluates or reevaluates your child for special education.
2. Before special education services are provided for the first time, that is, before the first individualized education program (IEP) is implemented.
3. Before personally identifiable information is disclosed to unauthorized persons. *Refer to Section 11, Education Records, for a list of persons who have the authority to see your child's education records without your consent.*
4. Before your private insurance is accessed by the district.
5. To use an individual family service plan (IFSP) instead of an IEP when your child is transitioning from Part C services to Part B services.

You have the right to:

1. Refuse or withhold consent.
2. Revoke consent if the action has not already occurred.

If you refuse to give written consent for an initial evaluation or a reevaluation, the district may ask the State Department of Education (SDE) for mediation or a due process hearing. If you refuse to give written consent for placing your child in a special education program for the first time, the district cannot ask for mediation or a due process hearing. If you fail to respond to reasonable measures by the district to obtain your written consent for assessments during a reevaluation, personnel may proceed with the assessments.

2. Written Notice

You have the right to:

1. Receive written notice a reasonable time before the district initiates or changes or refuses to change the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE). If you ask the district to initiate or change any of these matters, the district must consider your request and give you written notice within a reasonable amount of time (generally regarded as 10 calendar days)

2. If you cannot read, the notice can be read to you.

The district must have written documentation that the above requirements were met.

Written notice must include:

1. A description of the action proposed or refused.
2. An explanation of why the district proposes or refuses to take the action.
3. A description of other options the district considered and the reasons why those options were rejected.
4. A description of each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action.
5. A description of any other factors that are relevant to the district's proposal or refusal.
6. A statement informing you of your rights under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and how to obtain a copy of this *Procedural Safeguards Notice*.
7. Sources for you to contact to obtain assistance in understanding your rights.

3. Evaluation/Reevaluation Procedures

A full and individual evaluation of educational needs must be conducted before a child can be found eligible for and receive special education. A referral to consider a special education evaluation can be made by anyone, including you. For information on that process contact your district.

After the referral is made, an evaluation team, which includes you, will be formed. This team will review existing evaluation data on the child to decide whether an evaluation is needed. The team will also decide what additional information, if any, is needed to conduct the evaluation.

In conducting an initial evaluation, the team will gather and review information related to your child's involvement and progress in the general education curriculum through observations, interviews, tests, and a review of records, as well as information provided by you. If your child is eligible for special education services the evaluation information will also be used in the development of an IEP.

A reevaluation to determine whether your child continues to be eligible for special education services must be completed every 3 years. It can be done less frequently if conditions warrant and if both you and the district agree that a 3-year reevaluation is not needed. A reevaluation must be conducted before an evaluation team can determine that your child is no longer eligible

for special education services. An exception to this is when your child receives a diploma for completing regular graduation requirements or completes the semester in which he or she turns 21 years old.

As a member of the evaluation team, you have the right to:

1. Review existing evaluation data and give input for the evaluation.
2. Participate in deciding what additional data is needed and to request assessments to determine eligibility.
3. Participate in determining eligibility for special education services.
4. Participate in eligibility meetings convened by the district.
5. Request a meeting of your child's evaluation team.
6. Receive a copy of the eligibility report and any additional eligibility documentation.

4. Independent Educational Evaluation

If you disagree with an evaluation conducted by the district, you have the right to an independent educational evaluation (IEE) by a qualified examiner(s) who does not work for the district. The IEE could be provided to you at no cost, but first the district must have had the opportunity to complete an evaluation. If you believe additional assessments or procedures are needed beyond those conducted by the district to determine eligibility, you are not automatically entitled to them. You should ask the district for further assessments, and if the district refuses, you may request mediation or a due process hearing. If you request an IEE at the district's expense, the district may ask why you disagree with the district's evaluation, but you are not required to provide an explanation. The district must either provide you with information about where an IEE may be obtained or the district must initiate a due process hearing without unnecessary delay to show that its evaluation is appropriate. Even if a hearing decision is that the district's evaluation is appropriate, you still have the right to an IEE, but at your own expense.

Whenever you request or obtain an IEE at public expense, the district must also give you the criteria it uses when an evaluation is conducted. This includes:

1. Locations for the evaluation.
2. Required qualifications of the examiner.
3. State eligibility criteria for special education.
4. Maximum allowable charges for specified evaluations to eliminate unreasonably excessive fees, including travel costs for necessary services not available in the community.

If you can demonstrate that unique circumstances justify an IEE that falls outside the district's cost criteria, then it will be publicly funded. A hearing officer may order that an IEE be conducted as part of a hearing. In that case, the IEE must be publicly funded.

If you obtain an IEE that meets the district's IEE criteria and then make the evaluation available, the district must consider the results in any decision made about providing FAPE. You may also present the results of an IEE at a due process hearing. This is true regardless of whether the IEE was at your expense or public expense.

5. Individualized Education Program and Least Restrictive Environment

The individualized education program (IEP) is the written education plan for your child's special education and related services that will be provided by the district. You and the district develop the IEP together at an IEP team meeting. It must be reviewed and revised at least once every 365 days by you and the other members of the IEP team. The team can meet when needed to address services, which may involve an amendment to the IEP or a behavioral intervention plan. The IEP team is composed of you (the parent or the adult student if rights have transferred), a district representative, a special education teacher, a general education teacher, and related service providers.

The IEP becomes the basis for determining placement in the least restrictive environment (LRE), which means that you have the right for your child, to the maximum extent possible, to be educated with students who are not in special education. *The district's reassignment of a child to another classroom or school is not a change in LRE placement when the IEP goals and services and the degree of interaction with nondisabled peers remains the same.*

LRE provisions require that:

1. The child be enrolled in the school he or she would attend if nondisabled unless the IEP requires another arrangement.
2. If the child cannot be educated in the neighborhood school, the LRE placement should be as close to the child's home as possible.
3. Removal from the general educational environment occurs only when the disability is such that education cannot be achieved satisfactorily in that setting, even with the use of supplementary aids and services.
4. A child may not be removed from education in age-appropriate classrooms solely because of needed accommodations and/or adaptations to the general education curriculum. To the maximum extent appropriate, students with disabilities should be educated with students of similar chronological age who are nondisabled.

You have the right to:

1. Participate as a member of the IEP team to develop the IEP and determine the LRE placement either in person or by other means, such as a teleconference.
2. Be informed of the time, date, location, who is invited, and the purpose of IEP team meetings and have the meeting scheduled at a time and place convenient both for you and the district.
3. Receive a copy of the *Procedural Safeguards Notice* once per year. In addition you must receive a copy upon initial referral, upon your request for another copy, or if you file a formal complaint or a request for a due process hearing.
4. Bring someone who can assist in the development of your child's plan (advocate, friend, service coordinator) to the meeting if you wish.
5. Receive a copy of the IEP.
6. Consider, as a member of the team, an array of LRE placements available to meet your child's needs.

6. Resolving Disagreements about the Education Program

At times, you and the district may disagree with the identification, evaluation, placement, or the provision of FAPE. You are encouraged to contact the district and use various methods to resolve any differences as soon as they arise.

You have the right to file a written objection if the district proposes an IEP change or placement change that you disagree with. If your written objection is postmarked or hand delivered within 10 calendar days of receiving the district's written notice of a proposed change, the proposed change that you object to cannot be implemented. However, the district may request another IEP team meeting, voluntary mediation, or a due process hearing to resolve the disagreement. The written objection cannot be used to prevent the district from placing a child in an interim alternative educational setting (IAES) in accordance with the IDEA 2004 procedures for discipline of a child with a disability.

If you are unable to resolve disputes with the district, you may contact the district or call the SDE, 208/332-6912, about five state-administered options. These options include IEP facilitation, mediation, a formal complaint, a due process hearing, and an expedited due process hearing. Each of these options is explained in the following sections.

If you have questions regarding any of these processes, call **208/332-6912**. Correspondence should be directed to: Dispute Resolution Coordinator, State Department of Education, Bureau of Special Population Services, P.O. Box 83720, Boise, ID 83720-0027.

6.a. IEP Facilitation

IEP facilitation is a voluntary process during which a neutral SDE-contracted individual is appointed to oversee and conduct the IEP team meeting. IEP facilitation is provided at no cost to you or the district. The role of the facilitator is to help team members communicate more effectively and efficiently. The facilitator is not a member of the IEP team and has no stake in decisions made by the team. If you and the school district cannot resolve the issue at the IEP meeting with the help of IEP facilitation, all other options are still available to you, including participating in mediation, filing a formal complaint, or requesting a due process hearing. To request an IEP facilitator, contact your district or the Dispute Resolution Coordinator at the State Department of Education, 208/332-6912.

6.b. Mediation Provided by the SDE

Mediation provided by the SDE is:

1. A structured yet informal process for resolving conflict between you and the district regarding your child's identification, evaluation, educational placement or provision of FAPE.
2. Available at any time.
3. Voluntary, which means that you and the district both must agree to go to mediation.
4. A free service paid for by the SDE.
5. A meeting where an impartial, trained person (a mediator) not employed by the district meets with you and the district to try to reach a written agreement that is enforceable in court.
6. Confidential, which means discussions in the mediation session may not be used as evidence in a due process hearing or in court.

If you have already requested a due process hearing or filed a complaint, you may also request mediation from the State Department of Education. Mediation does not interfere with your right to and the timelines of a formal complaint or a hearing.

6.c. Formal Complaint

You have the right to file a formal complaint if you believe the district has violated a requirement of the IDEA 2004.

A complaint:

1. Must be signed, dated, and include the name, address, and telephone contact of the child and person making the complaint.

2. Must include one or more allegations (statements) that the district has violated the IDEA 2004 requirements. The alleged violations may not be older than one year from the date the complaint is filed unless the violation is considered to be ongoing *or* you are requesting compensatory services for a violation that occurred not more than 3 years ago.
3. Must include facts to support the allegation(s).

Mail complaints to the Dispute Resolution Coordinator, Idaho State Department of Education, Bureau of Special Population Services, P.O. Box 83720, Boise, ID 83720-0027. Complaints filed by email will not be accepted.

The SDE may resolve a formal complaint through any combination of the following:

1. Meeting with the parties and facilitating a mutually agreed to Early Complaint Resolution (ECR).
2. Reviewing and approving a Corrective Action Plan (CAP) proposed by the district that addresses the allegation(s).
3. Conducting an investigation of the complaint.
4. Verifying information from the district that documents that one or more allegations have been resolved.

A final report will be issued within 60 calendar days and will include findings of fact, conclusions, and corrective actions, if necessary. The SDE will set aside any part of a complaint that is being addressed in a due process hearing until the conclusion of the hearing.

6.d. Due Process Hearing

You have the right to file a due process hearing request with the SDE and the school district on any matter relating to identification, evaluation, educational placement, or the provision of FAPE.

You must file your request for a due process hearing within 2 years of the decision you are challenging. However, you have more time to file a due process hearing request if:

1. You were prevented from filing a request because the district misrepresented that it had resolved the problem; or
2. The district withheld information from you about special education assistance that your child may be entitled to.

Due process hearing requests must:

1. Be in writing and include the child's name, address, and school. and may not be received through email. *A model form for requesting a hearing can be obtained from the district or the SDE.*
2. Include a description of the problem, relevant facts, and a proposed answer to the problem.

The district can object to the hearing officer within 15 calendar days of receiving your request if it believes that your request isn't specific in identifying the issues, the facts, and the relief you are seeking. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request for a due process hearing. The request will be sent to your district's superintendent, director of special education, and the SDE Dispute Resolution Coordinator.

You will have the opportunity to resolve your dispute with the district through these options:

1. You will be offered mediation.
2. You can participate in a resolution session.

Resolution Session: Within 15 calendar days after the SDE receives your request for a due process hearing, district staff will meet with you and relevant members of your child's IEP team who have specific knowledge of the facts identified in your request for a due process hearing. You and the district will have the opportunity to resolve the issues at that meeting. The resolution session will be held unless you and the district both agree in writing to waive this meeting or to use the mediation process provided by the SDE. The district cannot bring its attorney to the resolution session unless you bring your attorney. If resolution is reached, a written agreement will be signed by you and the district. This written agreement can be voided within 3 business days. The agreement is enforceable in court.

A due process hearing will be scheduled if resolution is not reached within 30 calendar days of your initial request.

There are two different types of due process hearings:

1. A regular due process hearing may be requested by you or the district on any matter relating to identification, evaluation, educational placement, or the provision of FAPE. A decision will be made within 45 calendar days from the date of the request for the hearing, unless otherwise extended by the hearing officer.
2. An expedited hearing. The hearing must be held within 20 school days of the request with a decision issued within 10 school days of the expedited hearing. (See Section 6.e.)

You have the right to:

1. Have the hearing conducted by a trained impartial hearing officer who is not employed by any agency involved in the education or care of your child.
2. Receive all evaluations completed by the district and the recommendations based on such evaluations at least 5 business days before the hearing. Similarly, you are required to provide evaluations and any other documents that you will use in the hearing to the district at least 5 business days before the hearing.
3. Be informed of any free or low-cost legal services and other relevant services, e.g., names of expert witnesses.
4. Have the hearing at a time and place that allows you to attend.

During the hearing, you have the right to:

1. Attend with, and be advised by, legal counsel and by persons with special knowledge or training about children with disabilities.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
3. Prohibit the introduction of any evidence at the hearing that was not disclosed to you at least 5 business days before the hearing.
4. Obtain a written transcript of the hearing or an electronic verbatim record.
5. Open the hearing to the public if you wish.
6. Have the child present during the hearing, if appropriate.

You also have the right to:

1. Receive a written decision with findings of fact and conclusions of law, or an electronic version, no later than 45 calendar days after your hearing request was received. The hearing officer may extend this timeline for a specific period of time if a party requests.
2. Maintain the child's current educational placement while the due process hearing is proceeding unless you agree in writing to other arrangements. If the complaint involves a child seeking initial admission to school, the school-age child must be placed in a school until the proceedings are over.
3. Appeal the hearing officer's decision by initiating a civil action in district court. An appeal to civil court must be filed within 42 calendar days from the date of issuance of the hearing officer's decision.

If you are successful in a hearing and file a request in district court, you may be awarded reasonable attorney fees. (See Section 9.)

The hearing officer's decision, unless appealed, is enforceable in state or federal court.

6.e. Expedited Due Process Hearing

An expedited due process hearing is used only for behavior and disciplinary issues. (See Section 7 of this notice.)

An expedited due process hearing involves disciplinary issues, and shortened timelines apply. You have the right to request an expedited hearing if you disagree with a determination that the behavior was not a manifestation of the disability or the district's discipline decision resulting in a change of placement.

In an expedited hearing, the due process hearing procedures described in Section 6.d. of this notice will be used except for the following changes:

1. The hearing must be held within 20 school days of the request with a decision issued within 10 school days of the expedited hearing. No extensions of time are permitted.
2. The child must remain in the interim alternative educational setting (IAES) until the hearing officer makes a decision, the IAES time limit runs out, or you and the district agree to another placement for the duration of the hearing process and any subsequent appeals.

If the IAES timeline runs out during the hearing, the setting prior to the IAES becomes the placement. However, if school district personnel maintain that returning the child to that placement would be dangerous, they may request an expedited hearing to ask a hearing officer to continue the IAES, or they may seek a court injunction to prevent your child from returning to school. This expedited hearing procedure may be repeated as necessary.

7. General Provisions for Discipline under the IDEA 2004

The district may use disciplinary removals for children with disabilities, but only to the extent they would be applied to children without disabilities.

School personnel may:

1. Suspend a child for not more than 10 consecutive school days. Special education services may cease during this time.
2. Order additional short-term suspensions if they do not constitute a change of placement. A series of suspensions becomes a change of placement when it exceeds 10 cumulative school days in a school year and if a pattern is established by their proximity to one another and the total amount of time. Special education and services enabling your child to make progress in

the general curriculum must be provided after removal for 10 cumulative school days in the same school year.

3. Order a child's removal to an interim alternative educational setting (IAES) for not more than 45 school days if the child:
 - a. possesses or carries a weapon to school or a school function;
 - b. knowingly possesses or uses illicit drugs;
 - c. sells or solicits the sale of a controlled substance while at school or a school function; or
 - d. inflicts serious bodily harm to another person while at school or at a school function.

Special education services and services enabling your child to make progress in the general curriculum must be provided in the IAES. (See Section 8.)

4. Request an expedited hearing to place a child in an IAES for up to 45 school days if the district can demonstrate that maintaining the child in the current placement is substantially likely to result in injury to the child or others. Special education services must be provided.
5. Seek to obtain a court order to remove a child from the current placement. Special education services must be provided during this time.
6. Expel the child for behavior that is not a manifestation of his or her disability. A "manifestation determination" means that you and other members of the IEP team will determine whether your child's behavior was caused by or directly resulted from his or her disability *or* the failure to implement the IEP. A FAPE must be provided after 10 cumulative school days of removal in a school year regardless of whether or not the behavior was a manifestation of the child's disability.

8. Procedures for Disciplinary Placement in an Interim Alternative Educational Setting (IAES)

If school personnel order a disciplinary removal to an IAES, **you have the right to:**

1. Be notified of the disciplinary action to be taken and to receive a *Procedural Safeguards Notice* no later than the date on which the decision to take disciplinary action is made.
2. Participate, as a member of the IEP team, in the selection of the IAES that meets the following criteria:
 - a. enables the child to continue to participate in the general education curriculum, although in another setting;
 - b. allows the child to continue to receive services and any accommodations or adaptations included in the current IEP in order to meet the goals; and
 - c. includes services designed to prevent the behavior from recurring.

3. Participate in an IEP team meeting either before or within 10 business days following the disciplinary placement change. The purpose of the meeting is to consider the problem behavior and to:
 - a. review and modify the behavioral intervention plan as needed to address the problem behavior; or
 - b. develop an assessment plan to address the problem behavior if the district has not previously conducted a functional behavioral assessment and implemented a behavioral intervention plan. Upon completing the assessments, the IEP team will meet to develop and implement appropriate behavioral interventions.
4. Participate in a meeting to review the relationship between your child's disability and his or her behavior no later than 10 school days after the date the district decides to place the child in an IAES. This review is called a manifestation determination. The meeting can be held at the same time the IEP team considers a functional behavioral assessment and/or behavioral intervention plan. The child cannot be expelled for behavior that is related to his or her disability.
5. Request an expedited due process hearing if it is determined that the behavior was not a manifestation of your child's disability and you disagree with that decision or any decision regarding a change in placement, including placement in an IAES. (See Section 6.e. of this notice.)

9. Attorney Fees

If you have participated in a due process hearing or civil court action against the district, you may be able to recover reasonable attorney fees and related costs from a court if:

1. The court determines that you are the prevailing party.
2. A court orders the district to pay fees and costs according to typical rates in your community for the kind and quality of legal services you received.

Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed after the time of a written offer of settlement to you by the district if:

1. The district's offer is made at least 10 days before a due process hearing or civil proceeding begins.
2. You do not accept the offer within 10 days after it is made.
3. A court or due process officer finds that the relief you finally obtained from the hearing officer or court action was not more favorable to you than the offer of settlement.

An award of attorney fees and related costs may be made to you as a prevailing party if you were justified in rejecting the settlement offer.

Attorney fees may not be awarded:

1. For legal representation at an IEP meeting unless such a meeting is convened as a result of a due process hearing or judicial action.
2. For a mediation that is conducted before a request for a due process hearing.

A court may reduce an award for attorney fees if:

1. During the course of the action or proceeding, you unreasonably extended the final resolution of the controversy.
2. The amount of the request unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience.
3. The time spent and legal services rendered were excessive considering the nature of the action.
4. The attorney representing you did not provide all of the information required in a due process hearing request.

The amount of attorney fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.

A district that prevails:

1. May seek attorney fees from a court against the parent's attorney if the action is deemed frivolous, unreasonable, or without foundation or if it has prolonged the final litigation.
2. May seek attorney fees from a court against the parent's attorney or the parent if the hearing request was presented for improper purposes, such as to harass the district, cause unnecessary delay, or needlessly increase the cost of litigation.

10. Requirements for Unilateral Placement in a Private School/Facility at Public Expense

If you disagree with the FAPE offered in the IEP, developed by the IEP team, you may unilaterally (on your own without the district's support) place your child in a private school or privately obtain the special education or related services you feel your child needs. If you intend to seek reimbursement for your costs, then prior to removing your child from the public school you need to (1) notify the district either at the last IEP meeting or (2) provide written notice at

least 10 business days before such removal. To seek reimbursement for such services you must then request a due process hearing.

If the district has made FAPE available in a timely manner and you unilaterally (on your own and without the district's consent) place the child in a private school, the district is not required to pay for tuition, special education, or related services at the private school.

A court or hearing officer may order the district to reimburse you for the costs of a unilateral placement in a private school only if the child previously received special education services from the district and the court or hearing officer determines that the district did not make FAPE available in a timely manner and that your private placement was appropriate.

However, the cost of reimbursement may be denied or reduced if:

1. Prior to removing your child from public school, you did not cooperate with the district after it notified you of its intent to conduct an evaluation of the child.
2. There is a judicial finding of unreasonableness with respect to your actions.
3. Before removing your child from public school, you did not notify the district that you rejected its proposed placement to provide FAPE and did not state your concerns and intent to enroll the child in a private school at district expense by either:
 - a. notifying the IEP team at the most recent IEP team meeting before removal from public school; or
 - b. notifying the district in writing at least 10 business days (including any holidays that occur on a business day) before removal from public school.

A court or hearing officer will not deny or reduce reimbursement to you for failure to provide the notice specified in item 3 above if:

1. The district did not notify you of your obligation to provide the notice specified in item 3 above.
2. The district prevented you from providing such notice.
3. You cannot write in English or you have a disability that prevents you from providing a written statement.
4. The court or hearing officer determines that the placement proposed by the district would result in physical or serious emotional harm to the child.

11. Education Records

The IDEA 2004 and the Family Educational Rights and Privacy Act (FERPA) contain provisions that protect the confidentiality of child records. These laws also provide for your right to review and inspect your child's records. The district will assume you have the right to inspect and

review your child's education records unless the district has received legal binding documents limiting access to those records.

You have the right to:

1. Request a list of the kinds of educational records the school collects, maintains, or uses, for your child and where those records are kept.
2. Inspect and review your child's educational records. If you cannot do so at the school, you may ask the district to give you a copy of the records. The district may charge for the copies unless the charge would keep you from looking at the records. The district may not charge a fee to search for or to collect the records. The district must honor your request:
 - a. without delay but no later than 45 calendar days after the request;
 - b. before any meeting regarding an IEP; and
 - c. no later than 5 business days before a due process hearing.
3. Have someone explain, read, or interpret the records for you.
4. Give or refuse written consent to allow other people access to the education records. The request for consent must say what specific information has been requested, the purpose of the request, and who will access the records. However, consent is not required to release records when:
 - a. School employees have a legitimate educational interest in the records.
 - b. A representative of the Federal Comptroller General, the U. S. Department of Education, or the SDE accesses records for evaluation of a federal program or for enforcement or compliance with federal regulations.
 - c. Your child transfers from one school with the intent to enroll in another school.
 - d. There is an emergency to protect the health and safety of your child or other individuals.
 - e. A disclosure concerns the juvenile justice system's ability to effectively serve your child or to comply with court orders or subpoenas, as specified in state law. The district must make a reasonable effort to notify you of the order or subpoena in advance of compliance unless the subpoena specifically states that the request is not to be disclosed.
 - f. Organizations conduct studies on behalf of school districts or institutions specified under FERPA criteria.
 - g. When the district has designated information as "directory information" through its annual notification.
5. Review a district log of requests for and access to education records if the disclosure is not to the parent (or an adult student if rights have transferred), a school employee with a legitimate interest, or a party seeking directory information. This log includes the name, agency affiliation, date, and purpose for accessing the records.
6. Look only at information about your child if the record contains information about another child.

7. Ask the district to amend information in the record if you believe that it is incorrect, misleading, or violates privacy or other rights. If the district refuses to amend the record, you may request a district hearing. If the decision is against the district, the district must amend the record and inform you in writing. If the decision is for the district and the record is not amended, you may place a statement in the record saying why you disagree with the district's record. This statement will be maintained as part of the education record and will be released any time the record is released.
8. Be notified before the district destroys education records that are more than 5 years old and no longer needed to provide educational services. The notice must describe the information that will be destroyed after 45 days and include the procedure to formally object to the destruction of any information and have the records sent to you.

A permanent record of a child's name, address, phone number, grades, classes, immunization, test scores, attendance, grade level and year completed may be maintained by the district without a time limitation.

12. Using Public and Private Insurance Funds to Provide FAPE

The district may use Medicaid funds to pay for special education and related services. However, the district may not require you to sign up or enroll in Medicaid in order for the child to receive FAPE. If the district bills Medicaid for services, you must be notified of the frequency, amount, and type of services that the district will be submitting for reimbursement. If the district uses Medicaid, it must not result in any of the following:

1. Your family incurring out-of-pocket expense.
2. Your family paying for services required for your child outside of school that would otherwise be paid for by Medicaid.
3. A decrease in available lifetime coverage or any other insured benefit for your child.
4. An increase in premiums or lead to discontinued insurance coverage.
5. The risk of loss of eligibility for home and community-based waivers.

The district may access your private insurance to bill for services only if you provide informed written consent. Use of your private insurance is voluntary and does not impact the right of your child to receive evaluations or IEP services. Each time the district proposes to access your private insurance, the district must obtain your written consent and must inform you that a refusal to access your private insurance will not relieve the district of its responsibility to ensure that all required services are provided at no cost to you. If you consent to use private insurance, the district may use federal special education funds to pay the cost of the deductible or co-pay amounts to avoid a financial cost to you.

Chapter 12
DISCIPLINE**Chapter Contents**

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Chapter 12

Discipline

Schools are encouraged to address student misconduct through appropriate schoolwide discipline policies, instructional services, and/or related services. If a student has behavior problems that interfere with his or her learning or the learning of others, an individualized education program (IEP) team must consider the use of strategies, including positive behavioral supports and interventions, to address the behavior. If the IEP team determines that such services are needed, they must be included in the IEP and be implemented.

Students with disabilities who are subject to disciplinary actions by a district are entitled to all of the due process rights afforded students without disabilities under Idaho Code 33-205. In addition to these rights, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) provides special education rights and additional discipline procedures to a student with a disability whom the district is removing from his or her current educational placement. These procedures come into play only when the district is unable to work out an appropriate placement for the student with the parent/adult student. Further, these procedures do not prevent district personnel from maintaining a safe environment conducive to learning that is critical for all students.

Even though Idaho Code allows district personnel to “temporarily suspend” students for up to 20 school days, all students with disabilities who have been suspended or expelled for more than 10 cumulative school days in a school year retain the right to a free appropriate public education. (FAPE).

Section 1. General Discipline Guidelines

The general requirements pertaining to the discipline procedures of special education students are as follows:

1. District personnel may suspend any student, including a special education student, for up to 10 cumulative school days in a school year if he or she violates the code of student conduct, and services may cease during this period. In accordance with Idaho Code:
 - a. A school principal has the authority to order a disciplinary suspension for up to 5 school days.
 - b. The superintendent can extend the disciplinary suspension for up to 5 additional school days.
2. A series of suspensions must not constitute a pattern of removals resulting in a change of placement.
3. Students who have not been determined eligible for special education may be entitled to an evaluation and other IDEA 2004 rights—including the right to FAPE during periods

of disciplinary suspension that extend beyond 10 cumulative school days in a school year if:

- a. The district had knowledge that the student met the IDEA 2004 eligibility prior to the behavior that precipitated the disciplinary suspension; and
- b. The parent/adult student asserts the right to FAPE.

Section 2. Actions Involving a Change of Placement

A change of placement is a removal from the student's current educational placement for more than 10 consecutive days *or* a series of removals that constitute a pattern when they total more than 10 cumulative school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern. Whether a pattern of removals constitutes a change of placement will be determined on a case-by-case basis by the district; the district's determination is subject to review through an expedited due process hearing and judicial proceedings.

Even if the disciplinary action is to suspend or expel a student, educational services cannot cease for more than 10 cumulative school days in a school year.

A manifestation determination is required if the district is considering removing a student with a disability from his or her educational placement for disciplinary reasons. A manifestation determination is defined as a review of the relationship between the student's disability and the behavior subject to disciplinary action. See Section 4 on page 207 for more information.

A. District Actions Following a Change of Placement

Whenever disciplinary action results in a change in placement, the district must:

1. Notify the parent/adult student of the disciplinary action to be taken.
2. Conduct a functional behavioral assessment (FBA) and develop a behavioral intervention plan (BIP).
3. Conduct a manifestation determination immediately, if possible, but not later than 10 school days after the date on which the decision to take the disciplinary action is made.
4. Provide FAPE.

B. District Actions Resulting in a Change of Placement

District administrators may change a student's placement by:

1. Unilaterally removing a special education student from his or her current placement for:

- a. more than 10 consecutive school days in a school year; or
 - b. a series of removals that constitute a pattern because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
2. Ordering a change in the student's placement to an interim alternative educational setting (IAES) for not more than 45 school days (to the same extent students without disabilities would be placed in an IAES or removed from school) if the student:
 - a. Carries or possesses a weapon at school or a school function; or
 - b. Knowingly possesses, carries, or uses illicit drugs *or* sells or solicits the sale of a controlled substance while at school or a school function; or
 - c. Inflicts serious bodily harm, defined as bodily injury that involves:
 - (1) A substantial risk of death;
 - (2) Extreme physical pain; or
 - (3) Protracted and obvious disfigurement; or protracted loss or impairment of the function of the bodily member, organ, or mental faculty to another person at school, on school premises, or at a school function.

Note: District personnel may remove a student to an IAES for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability for violations involving weapons, drugs, or serious bodily injury to another person.

C. Hearing Officer Actions Resulting in a Change of Placement

Through an expedited due process hearing, district administrators may ask a hearing officer to place a student with a disability in an appropriate IAES.

1. In requesting a hearing officer to place a student in an IAES, the district must:
 - a. Show that the request is based on a violation involving weapons, drugs, controlled substances, or serious bodily harm;
 - b. Indicate whether the request is for an *initial* period of not more than 45 school days or an *additional* period of not more than 45 school days; and,
 - c. Demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others.

2. In determining whether to grant a district's request to place a student in an IAES, the hearing officer must:
 - a. Determine that the IAES proposed by district personnel in consultation with the student's special education teacher or the IEP team is appropriate;
 - b. Consider the appropriateness of the current placement; and
 - c. Consider whether the district has made reasonable efforts to minimize the risk of harm in the current placement, including the use of supplementary aids and services.

D. Court Actions Resulting in a Change of Placement (Honig Injunction)

District administrators may seek a court order (Honig Injunction) to remove a special education student from school or the current placement at any time. FAPE must not cease during an injunction.

Section 3. FAPE Considerations

Regardless of the disciplinary change of placement, services may not cease and the district must always provide FAPE to the student.

A. IEP Team Meeting Concerning a Disciplinary Change of Placement

Before or within 10 school days after district personnel suspend a student for more than 10 cumulative school days in a school year, or whenever a disciplinary change of placement occurs, the IEP team must do one of the following:

1. If it has not already done so, the IEP team will conduct an FBA to develop and implement an appropriate BIP.
2. If a student with a disability already has a BIP, the IEP team will meet to review the BIP and its implementation to determine whether changes are necessary.

Subsequently, if a student with a BIP is suspended, but the removal does not constitute a disciplinary change of placement, each member of the IEP team will review the BIP and its implementation; an IEP team meeting will be conducted if any team member believes changes to the BIP or its implementation are necessary.

B. FAPE Requirements in an IAES

If the student's placement will change to an IAES, the IEP team must select an IAES that enables the student to:

1. Continue to participate in the general education curriculum;
2. Progress toward meeting the goals set out in his or her IEP; and
3. Receive, as appropriate, an FBA and behavioral intervention services to address the behavior violation so that it does not recur.

C. Transportation

If the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA 2004 must be afforded to the student in matters concerning transportation. Whether a suspension from the bus counts as a suspension from school depends on whether bus transportation is identified on the IEP:

1. If bus transportation is on the IEP, a suspension from the bus would be treated as a suspension from school (unless the district provides transportation services in some other way, such as “transportation in lieu of”) because transportation is necessary for the student to obtain access to the location where all other services will be delivered.
2. If bus transportation is not on the IEP, a suspension from the bus would not be counted as suspension from school. In these cases, the student and the parent would have the same obligation to get to and from school as a student without a disability who had been suspended from the bus.

If the student’s behavior on the bus results in a suspension from the bus, the IEP team must consider whether the behavior should be addressed in a BIP.

Section 4. Procedures for a Manifestation Determination

A manifestation determination by the IEP team involves a review of the relationship between the student’s disability and the behavior subject to disciplinary action.

A. Actions Involving a Manifestation Determination

When a disciplinary action results in a change of placement for more than 10 school days, the district will take the following actions:

1. The parent/adult student will be notified of the disciplinary action and provided with a copy of the *Procedural Safeguards Notice* not later than the date on which the decision to take disciplinary action is made.
2. A meeting will be held immediately, if possible, but no later than 10 school days after the date on which the decision to take disciplinary action is made. This meeting will include the district, the parent/adult student, and other relevant members of the IEP

team (as determined by the parent and the district). The purpose of the meeting is to review all relevant information in the student's file, including:

- a. The student's IEP and all relevant information in the student's file;
 - b. Any teacher observations; and
 - c. Any relevant information provided by the parent/adult student.
3. Based on a review of the information, the IEP team will determine if the conduct in question was:
- a. Caused by or had a direct and substantial relationship to the student's disability; or
 - b. The direct result of the district's failure to implement the IEP.

If the IEP teams finds that either a or b above is true, the student's behavior will be determined to be a manifestation of his or her disability.

B. When Behavior Is a Manifestation of the Disability

If a student's behavior is determined to be a manifestation of his or her disability, the IEP team will:

1. Conduct an FBA and implement a BIP for the student if the district had not conducted such an assessment prior to the behavior that resulted in a change in placement;
2. Review the BIP if one had previously been developed and modify it as necessary to address the behavior;
3. Return the student to the placement from which he or she was removed, unless the parent and district agree in writing to a change of placement as part of the modification of the BIP.

C. When Behavior Is Not a Manifestation of Disability

If the IEP team determines that the student's behavior was not a manifestation of his or her disability, the same disciplinary procedures applicable to students without disabilities, including long-term suspension or expulsion, may be applied to the student with a disability. The district will forward special education and disciplinary records for consideration to the board of trustees, which makes the final decision regarding the disciplinary action.

Even if the disciplinary action is to suspend or expel, the following provisions must be met:

1. Educational services cannot cease for more than 10 school days in a school year. Educational services must be provided to the extent necessary to allow the student with

a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.

2. An IEP team must convene to develop an IEP that specifies what special education and related services will be provided during the period of suspension or expulsion.

Section 5. Other Considerations

A. Request for an Expedited Hearing

An expedited hearing is a hearing that occurs within 20 school days of the request with a decision rendered within 10 school days of the hearing.

1. The parent/adult student may request an expedited due process hearing if he or she:
 - a. Disagrees with the determination that the behavior was not a manifestation of the student's disability;
 - b. Disagrees with any decision of the IEP team regarding a change of placement during a disciplinary proceeding; or
 - c. Disagrees with the decision regarding the student's placement in an IAES.
2. The district may request an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.

A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

See Chapter 13, Section 4 on page 220 and Section 5 on page 226, for an explanation of regular and expedited due process hearing rights and procedures.

B. Protections for Students Not Yet Eligible for Special Education

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the district may assert the protections of the IDEA 2004 *if* the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.

1. Basis of knowledge

With limited exceptions, which are described in item 2 below, the district will be deemed to have knowledge that an individual is a student with a disability if one or more of the following is true:

- a. The parent/adult student has expressed concern to district personnel that the student is in need of special education and related services. The concern must be expressed in writing unless the parent/adult student is unable to write or has a disability that prevents a written statement.
 - b. The parent/adult student has requested that the student be evaluated for special education.
 - c. The student's teacher or other district personnel have expressed concern about a pattern of behavior demonstrated by the student directly to the director of special education or to other district supervisory personnel in accordance with the district's established Child Find system or special education referral system.
2. No basis of knowledge

The district will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

- a. An evaluation was conducted and a determination was made that the student did not have a disability.
- b. The evaluation team determined that an evaluation was not necessary and written notice of that decision was provided to the parent/adult student.
- c. The parent/adult student did not give written consent for an evaluation.
- d. The parent/adult student refused special education services.

If the district did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

C. Parent/Adult Student Request for Evaluation of a Disciplined Student

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation will be conducted in an expedited manner. Pending the results of the evaluation, the student will remain in the educational placement determined by district officials, which can include suspension or expulsion without educational services.

1. If the student is subsequently determined eligible for special education, the district will:
 - a. Convene an IEP team meeting to develop an IEP.
 - b. Conduct a manifestation determination.

- (1) If the behavior is caused by or had a substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the least restrictive environment (LRE).
 - (2) If the behavior is not caused by or had a substantial relationship to the student's disability, the student is subject to the disciplinary placement that had been determined, but he or she is still entitled to receive FAPE, which is determined by the IEP team. Educational services cannot cease for more than 10 school days in a school year. Educational services must be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. If the evaluation team determines that the student is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students.

D. Referrals to and Action by Law Enforcement and Judicial Authorities

1. The district may report a crime committed by a student with a disability to appropriate authorities. The IDEA 2004 does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.
2. If a student brings a firearm to school, law enforcement must be contacted pursuant to the Gun-Free Schools Act.
3. If the district reports a crime, it will ensure that copies of the special education and disciplinary records of the student are given to the appropriate law enforcement authorities for their consideration, to the extent the release of records is permitted by the Family Educational Rights and Privacy Act (FERPA). Generally, the release of records requires consent, but exceptions are listed in Chapter 11, Section 5 beginning on page 170.

E. Transfer of Discipline Records

Idaho Code 33-209 requires that whenever a student transfers to a new school and a school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information will be included in the transfer of records to the new school. The transmission of the student's record must include both the student's current IEP, including the BIP, and any current or previous disciplinary action taken. This information will be contained in a sealed envelope marked to indicate the confidential nature of the contents and addressed to the principal or other administrative officer of the school.

When the district initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities must be given to authorized

district personnel for their consideration in making the final determination regarding the disciplinary action.

Chapter 13

DISPUTE RESOLUTION

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Chapter 13

Dispute Resolution

On occasion, conflicts arise between school districts and parents/adult students. Several mechanisms are available through the State Department of Education (SDE) to assist in resolving disputes. The processes are individualized education program (IEP) facilitation, SDE mediation, formal complaint, due process hearings, and expedited due process hearings. This chapter contains information on each of these processes.

Contact Information

The SDE accepts formal complaints and requests for IEP facilitation, SDE mediation and hearings via fax, mail, and personal delivery. Additionally, requests for IEP facilitation and SDE mediation may also be made by telephone. Formal complaints and requests should be directed to:

Dispute Resolution Coordinator
State Department of Education
Bureau of Special Populations Services
P.O. Box 83720
Boise, ID 83720-0027
208/332-6912
800/432-4601
TT: 800/377-3529
Fax: 208/334-4664

The SDE does not accept requests for any type of dispute resolution identified in this chapter via email.

Section 1. IEP Facilitation

A request for IEP facilitation may be made by the parent/adult student or by a district representative, such as a director of special education. Requests may be made in writing or by phone to the SDE Dispute Resolution Coordinator as directed in the Introduction to this chapter on page 215.

A. Definition

IEP facilitation is a voluntary process during which an SDE-contracted individual is appointed to facilitate an IEP team meeting. The role of the facilitator is to help team members communicate more effectively and efficiently. IEP facilitation supports early dispute resolution, providing assistance to the IEP team before a potential conflict has time to develop into a more serious dispute. The facilitator is an impartial third party, not a member of the IEP team, and has no stake in decisions made by the team. All IEP facilitators have received specialized training provided by the SDE. Facilitators are selected on a rotational and/or geographical basis.

The SDE provides IEP facilitation at no charge to the district or the parent/adult student.

B. IEP Facilitation Requests

A request for IEP facilitation may be made by either a parent/adult student or a designated district representative, such as a special education director, who has the authority to allocate resources and has knowledge of special education. A request for IEP facilitation:

1. may concern an initial, annual, or amended IEP that may be considered too difficult to manage; and
2. should be made at least two weeks prior to the scheduled IEP meeting.

The SDE will consider IEP facilitation requests on a case-by-case basis. As part of this consideration, the SDE Dispute Resolution Coordinator will contact the other party to determine whether that party is willing to participate; both parties must agree to IEP facilitation for the process to go forward.

Section 2. SDE Mediation

The IDEA 2004 requires the SDE to make mediation available to help a district and a parent/adult student resolve disputes. A request for SDE mediation may be made by either the parent/adult student or the district. Requests may be made in writing or by phone to the SDE Dispute Resolution Coordinator as directed in the Introduction to this chapter on page 215.

See pages 233-240 for the booklet “Special Education Mediation in Idaho: Managing Parent and School Conflict through Effective Mediation.”

A. Definition of Mediation

Mediation is a voluntary, informal process in which an impartial third party (a mediator) assists parents/adult students and district personnel resolve disputes. Mediation builds positive working relationships, encourages mutual understanding, and helps the parties focus on their common interest—the student. The ultimate goal of mediation is to obtain a written agreement that is acceptable to both parties. Even if a written agreement is not achieved, mediation may be helpful in clarifying issues. The district will not use the term “mediation” to refer to any district-level process for resolving disputes.

B. SDE’s Mediation System

The SDE has developed a mediation system to help resolve disagreements between districts and parents/adult students regarding the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE). Mediation offered by the SDE is a voluntary, confidential, and free process. An agreement reached by the parties through SDE mediation must be set forth in writing and is enforceable in state and federal courts.

1. Both the district and the parent/adult student may request SDE mediation at any time.
2. The SDE has the discretion to suggest mediation to either party at any time it deems appropriate, but is required to make mediation available to the parties after a request for a due process hearing has been filed.

Following a request for mediation, the SDE will contact the other party and ask whether they are willing to participate in mediation. Mediation may not be used to deny or delay the right to a due process hearing or any other rights afforded to students and parents.

C. SDE Mediators

Idaho SDE mediators are impartial and trained in effective mediation, communication, and problem-solving skills, and in laws and regulations relating to the provision of special education and related services. A mediator assists the parent/adult student and the district in resolving disputes. The SDE will select the mediator on a rotational basis from a list of highly qualified mediators. At times, the SDE may appoint two individuals to serve as co-mediators.

1. In all cases a mediator must not:
 - a. be an employee of the district involved in the dispute;
 - b. have children enrolled in the district involved in the dispute; or
 - c. have a personal or professional conflict of interest.
2. Additionally, if the parties have agreed to SDE mediation following a due process hearing requested:
 - a. co-mediators may not be used; and,
 - b. the mediator may not be an employee of any district or state agency providing services that are publicly funded under the IDEA 2004, Part B.

D. Mediation Timelines

The SDE will appoint a mediator within 3 business days of a request for mediation. The mediation will be held in a location convenient to the parties involved, and every effort will be made to complete the process within 21 calendar days.

E. Confidentiality

Discussions that occur during the SDE mediation process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding. The parties in the SDE mediation process will be required to sign a confidentiality pledge before mediation begins.

F. Mediation Agreement

An agreement reached by the parties through SDE mediation must be set forth in writing and is enforceable in state and federal courts.

Section 3. Formal Complaints

A formal complaint may be filed with the SDE by any individual or organization from Idaho or another state who believes the district or other education agency has violated a requirement of Part B of the IDEA 2004. The SDE will accept a complaint received by mail, fax or hand delivery. A complaint filed by email will not be accepted. Contact information is listed in the Introduction to this chapter on page 215.

See pages 241-246 for the document titled “Procedures for Resolving Complaints.”

A. Filing Complaints

A formal complaint can be made by any person or organization. The complaint must be in writing and including the following information:

1. current date;
2. the name, address, and telephone number of the person making the complaint (or available contact information);
3. the signature of the person making the complaint;
4. name and address of the student involved (or available contact information in the case of a homelessness student or family);
5. the school and district or other education agency that is the subject of the complaint;
6. one or more statements (allegations) that the district has violated one or more requirements of Part B of the IDEA 2004; and
7. the facts and/or a description of the events that support each allegation.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable. A longer period may be reasonable because either (1) the violation is considered to be ongoing or (2) the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

B. Methods of Resolving Complaints

The SDE will make every effort to resolve complaints in the least adversarial manner possible. Resolution of a formal complaint may be achieved through one or more of the following four processes:

1. **Full investigation:** If necessary, the SDE will investigate the complaint by conducting interviews and by reviewing files, correspondence, and other information. An on-site investigation may occur if necessary.
2. **Early complaint resolution (ECR):** The SDE may propose the use of ECR to resolve the complaint. This approach, which must be mutually agreed upon, provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular findings of fact and conclusions. The SDE Dispute Resolution Coordinator or an SDE-contracted complaint investigator will facilitate a resolution through the development of a written agreement to be signed by both parties. If this process is not successful the SDE will conduct a full investigation.
3. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The SDE may accept, reject, or negotiate the proposed CAP or require other corrective actions or timelines to ensure the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the SDE will conduct a full investigation.
4. **Verification of resolution:** At any time during an investigation, the district may submit information to the SDE to document that one or more of the allegations of the complaint have been resolved. The SDE may also receive similar information from other sources.

C. Summary of SDE Complaint Procedures

Upon receipt of a written complaint, the SDE will do the following:

1. Determine whether the complaint meets all of the required criteria. The SDE will notify the complainant if his or her submission does not meet the required criteria.
2. Notify the district that a complaint has been received and offer both parties SDE mediation.
3. Set aside all or any part of the written complaint that is being addressed in a due process hearing until the conclusion of the hearing. Any issue that is not a part of the due process action will be resolved using the SDE complaint procedures and timelines. If a hearing officer's decisions are not adequately addressed by the district, the SDE will investigate.

4. Give the complainant the opportunity to submit additional information about the allegations, either orally or in writing.
5. Resolve the complaint and issue a written decision that includes the findings of fact, conclusions, and resolution for each allegation within 60 calendar days of receipt of the complaint. This time period may be extended, but only under exceptional circumstances, which must be documented by the SDE. The resolution will state:
 - a. how to remedy any denial of services, which may include the award of monetary reimbursement or other corrective action as appropriate to the needs of the student; and
 - b. the future provision of services for a student with a disability, if such clarification is needed.
6. Ensure the district takes corrective action if it is determined that the district was out of compliance.

Section 4. Due Process Hearings

A request for a due process hearing may be made by either a parent/adult student or the district. The request should be mailed, faxed or hand delivered to the Dispute Resolution Coordinator at the SDE. A request for a due process hearing filed by email will not be accepted. Contact information is listed in the Introduction to this chapter on page 215.

A. Definition

Idaho's due process system has two types of hearings, a regular due process hearing and an expedited due process hearing:

1. A regular due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of FAPE.
2. An expedited due process hearing is as an administrative hearing to resolve disputes concerning discipline occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

B. Due Process Hearing Request from Parent/Adult Student

A due process hearing may be requested on behalf of a student by a parent/adult student or by an attorney representing the student.

1. A due process hearing must be initiated within two years of the date the parent/adult student knew or should have known of the disputed decision. The two-year timeline will

not apply if the parent/adult student was prevented from requesting a hearing due to misrepresentations or the withholding of information by the district.

2. A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of FAPE if:
 - a. the district proposes to initiate or change any of these matters; or
 - b. the district refuses the parent's/adult student's request to initiate or change any of these matters.

See page 247 for a *Due Process Hearing Request* form. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request.

If the district receives a request for a hearing, it will immediately notify and forward a copy of the request to the SDE. Additionally, the parent/adult student or his or her attorney should send a copy of the due process hearing request to the district.

C. Due Process Hearing Request by a District

A district may initiate a due process hearing in an attempt to accomplish one or more of the following:

1. override a parent's/adult student's refusal of consent for an evaluation or the release of information;
2. override a parent's/adult student's written objection to an IEP change, an educational placement change, or disciplinary actions when there is an imminent threat to safety;
3. ask a hearing officer to place a student in an interim alternate education setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others; or
4. have a hearing officer determine whether an evaluation conducted by the district was appropriate or whether an evaluation obtained by a parent/adult student meets the criteria for a publicly funded independent educational evaluation (IEE).

If the district initiates a hearing, the district will inform the parent/adult student and the SDE.

D. Contents of a Request for a Due Process Hearing

A request for a due process hearing must be made in writing and must include the following information:

1. the current date;

2. the student's name, address (or available contact information in the case of a homeless student), school, and district;
3. the signature of the individual make the request for a due process hearing;
4. a description of the nature of the request that specifies the issues; and
5. a proposed resolution of the problem or the relief sought.

E. Actions for Due Process Hearings

1. A Due Process Request Is Filed

- a. A request may be filed by either party.
- b. The district superintendent has the responsibility for informing the district's board of trustees of any request for a hearing.
- c. The district must inform a parent/adult student of any free or low-cost legal or other relevant services available to him or her if the district initiates a due process hearing or if the parent/adult student requests such information.

2. A Hearing Officer Is Assigned

- a. Within 10 calendar days of a request for a hearing, an impartial hearing officer will be assigned by the SDE. The SDE maintains a list of trained hearing officers, along with their qualifications, and assignments are made on a rotational basis.
- b. A hearing officer may not be an employee of the district or the SDE, an individual having any personal or professional interest that would conflict with his or her objectivity in the hearing, or a member of the board of trustees of the district.
- c. The district will pay for all actual expenses incurred by the hearing officer and for the cost of a verbatim transcript of the hearing. The hearing officer will be compensated at rates set by the SDE.

3. SDE Mediation Is Offered

The SDE is required to offer mediation as an alternative dispute resolution mechanism to the involved parties.

4. Response to a Due Process Request

- a. The due process request will be deemed sufficient unless the party receiving the request notifies the hearing officer and the other party in writing that they believe

the request has not met the requirements. The other party must file a response within 10 calendar days addressing the issues raised.

- b. If the district has not sent a prior written notice to the parent/adult student regarding the subject matter contained in the due process request, the district will, within 10 calendar days of receiving the request, send the parent/adult student a response that includes all the components of prior written notice.
- c. Either party can amend the request, upon obtaining written consent from the other party or as granted by the hearing officer, at least 5 calendar days prior to the hearing.

5. Pre-hearing Resolution Session

- a. A resolution session will be held within 15 calendar days of a request for a due process hearing unless:

- (1) both parties provide a written waiver of the meeting; or
- (2) both parties agree to participate in SDE mediation.

If *both* parties waive the resolution session *and* if *either* party declines to participate in SDE mediation, a due process hearing will be scheduled, and the 45-day timeline for completing the hearing will start on the date that the request for a hearing was received.

- b. A “resolution team” includes the parent/adult student, a representative of the district who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing. The district’s attorney will not attend the resolution session unless the parent/adult student will be accompanied by an attorney.
- c. If a resolution is reached regarding the issues raised in the request for a due process hearing, the district representative and parent/adult student will sign a legally binding document that is enforceable in state and federal court. Either party may void this agreement within 3 business days of signing the agreement.
- d. A due process hearing will be scheduled if no resolution is reached within 30 calendar days of receiving the request for a due process hearing.

6. Hearing Preparation

- a. A parent/adult student will be allowed to inspect and review reports, files, and records pertaining to the student not less than 5 business days prior to a due process hearing. A district may charge a fee for copies of records if the fee does not effectively prevent a parent/adult student from exercising his or her right to inspect

and review those records. The district may not charge a fee to search for or retrieve records.

- b. At least 5 business days prior to a due process hearing, each party will disclose to all other parties:
 - (1) evaluations completed by that date; and
 - (2) recommendations based on those evaluations intended to be used at the hearing.
- c. New issues (issues not in the original due process request) may not be raised within 5 business days of the due process hearing unless agreed to by both parties or allowed by the hearing officer.
- d. The hearing officer will provide notification as to the time and place of the due process hearing to the parent/adult student, district officials, and the SDE. The hearing must be conducted at a time and place reasonably convenient to the parent/adult student.

7. The Due Process Hearing

- a. The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions pursuant to the Idaho Administrative Procedure Act (IDAPA) and IDEA 2004 requirements.
- b. A parent/adult student and district personnel may be accompanied and advised by legal counsel and other persons with special knowledge or training about students with disabilities.
- c. A parent/adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
- d. Only a parent/adult student, a district, and their respective attorneys have the right to present evidence, to compel the attendance of witnesses and the production of documents, and to confront and cross examine witnesses.
- e. Any party may prohibit the introduction of any evidence at the hearing that was disclosed less than 5 business days before the hearing.
- f. During the hearing the district will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the SDE for resolution.
- g. A record of the hearing will be made. The record will be a written verbatim transcript. The parent/adult student may choose an electronic verbatim record. The

district will pay the transcript costs, and a copy of the transcript will remain with the SDE. The parent/adult student and district personnel have the right to obtain a copy of the record upon formal request.

8. Decision of the Hearing Officer

- a. The decision of the hearing officer will be based solely on presentations made at the due process hearing.
- b. The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received FAPE.
 - (1) In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:
 - (a) impeded the student's right to FAPE;
 - (b) significantly impeded a parent's/adult student's opportunity to participate in the decision-making process; or
 - (c) caused a deprivation of educational benefit.
 - (2) A hearing officer may order a district to comply with procedural requirements, regardless of whether a district's failure in this area did or did not result in a denial of FAPE.
- c. The decision will include findings of fact and conclusions of law.
- d. The hearing officer's written decision must be available within 45 calendar days from the date of the request for a hearing. The 45-calendar-day timeframe begins when the written request is actually received by the district or the SDE, whichever is earlier.
- e. The findings of fact and decision must be sent to the parent/adult student at no cost. Copies will also be mailed to the district superintendent, the SDE, and representatives of the district.
- e. After deleting personally identifiable information, the SDE will transmit the decision to the Special Education Advisory Panel (SEAP) and make the decision available to the public upon request.
- f. A hearing officer's decision will be enforceable in state and federal court. It will be implemented not later than 14 calendar days from the date of issuance unless:
 - (1) the decision specifies a different implementation date; or

- (2) either party appeals the decision by initiating civil action in state or federal district court.
- g. An appeal to state or federal court must be filed within 42 calendar days from the date of issuance of the hearing officer's decision.
- h. Stay Put
 - (1) During the pendency of any due process hearing, the student must remain, or "stay put," in his or her current educational placement unless the district and parent/adult student agree otherwise.
 - (2) The stay-put placement continues during any subsequent appeals unless a hearing officer agrees with a parent/adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer's decision becomes the stay-put placement.
 - (3) If the dispute involves an application for initial admission to public school in Idaho, the student, with the written consent of his or her parent, must be placed in the public school program until the proceedings are completed.
 - (4) "Stay put" does not apply when a child is transitioning from Part C (the Infant Toddler program) to Part B services in Idaho. Following the development of an IEP or an individual family service plan (IFSP), if an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot "stay put" in Part C:
 - (a) With written consent of the parent, the child must be placed in the public school until completion of all the hearing proceedings.
 - (b) If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.

Section 5. Expedited Due Process Hearings

A request for an expedited due process hearing may be made by either a parent/adult student or the district. The request should be mailed, faxed or hand delivered to the Dispute Resolution Coordinator at the SDE. A request for an expedited due process hearing filed by email will not be accepted. Contact information is listed in the Introduction to this chapter on page 215.

A. Definition

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

B. Expedited Hearing Requests

1. A district may request an expedited hearing if:
 - a. the district seeks a hearing officer's order for a change of placement to an IAES for up to 45 school days; or
 - b. the timeline of the IAES has expired or will expire, and the district maintains that returning the student to the prior placement would be dangerous for the student or others.
2. A parent/adult student may request an expedited hearing if:
 - a. he or she disagrees with a determination that the student's behavior was not a manifestation of the disability; or
 - b. he or she disagrees with the district's discipline decision, which resulted in a change of placement.

See Section 5D on page 227 of this chapter for additional information regarding placement during a hearing.

C. The Expedited Hearing Process and Decisions

An expedited hearing will be conducted in a fair and impartial manner. Guidelines and proceedings will be the same as those in a regular due process hearing, except for the following changes:

1. The SDE will appoint a hearing officer within 2 business days of a request.
2. The hearing officer will mail a written decision to the parties within 20 calendar days of receiving the request for a hearing unless a specific extension of this timeline is requested by one party and agreed to by both parties.
3. Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least 2 business days before the hearing.

D. Placement During an Expedited Hearing

When a hearing has been requested by either the parent/adult student or the district regarding placement decisions, the student must "stay put" during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

1. The student will remain in the IAES until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first.

2. Upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if district personnel maintain that it is dangerous for the student to return to that placement, the district may request an expedited hearing to continue the IAES for up to an additional 45 school days. This procedure may be repeated as necessary.

If the hearing officer finds for the parent/adult student, the change of placement cannot occur and the IEP team will need to determine the extent of services that are appropriate to meet the student's individual needs and to address the student's behavior. If the hearing officer finds for the district, the district may use the same disciplinary procedures, including expulsion, as it uses for any other student, except that FAPE must be provided according to the requirements in Chapter 12, Section 3 on page 206.

Section 6. Attorney Fees

A district court will have jurisdiction in the awarding, determination, or prohibition of attorney fees to a parent/adult student. The court may:

1. award reasonable attorney fees as part of the costs to a parent/adult student who is the prevailing party; and
2. determine the amount of attorney fees, using prevailing rates in the community in which the action occurred, for the kind and quality of services provided. No bonus or multiplier may be used in calculating the amount of fees awarded.

Funds under Part B of the IDEA 2004 cannot be used by the district to pay any attorney fees or costs of a party related to an action or proceeding, such as deposition, expert witnesses, settlements, and other related costs. However, Part B funds may be used to pay hearing officer fees or the costs of a meeting room to conduct the hearing.

A. Prohibition of Attorney Fees

1. Attorney fees may not be awarded:
 - a. for legal representation at an IEP meeting unless such a meeting is convened as a result of a due process hearing or a judicial action; or
 - b. for mediation that is conducted prior to a request for a due process hearing.
2. Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent/adult student if:

- a. the district makes an offer at least 10 calendar days before a due process hearing or a civil proceeding begins;
- b. the offer is not accepted by the parent/adult student within 10 days calendar after it is made; and
- c. a court or due process hearing officer finds that the relief obtained by the parent/adult student is not more favorable to the parent/adult student than the offer of settlement.

B. Exception to the Prohibition of Attorney Fees

An award of attorney fees and related costs may be made to a parent/adult student who is a prevailing party and who was substantially justified in rejecting the district's settlement offer.

C. Reduction in the Amount of Attorney Fees

A court may reduce an award for attorney fees under any of the following circumstances:

1. During the course of the action or proceeding, the parent/adult student or his or her attorney unreasonably extended the final resolution.
2. The amount of the award unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience.
3. The time spent and legal services rendered were excessive considering the nature of the action.
4. The attorney representing the parent/adult student did not provide the information required in a due process hearing request.

D. Exception to the Reduction of Attorney Fees

The amount of attorney fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.

E. Special Provisions Regarding Attorney Fees

1. A district that prevails may seek attorney fees from a court against the parent's/adult student's attorney if the action is deemed frivolous, unreasonable, without foundation or prolongs the litigation.
2. A district that prevails may seek attorney fees from a court against the parent's/adult student's attorney or the parent/adult student if the hearing request was presented for

improper purposes such as to harass the district, cause unnecessary delay or needlessly increase the cost of litigation.

Documents

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SPECIAL EDUCATION MEDIATION IN IDAHO

MANAGING PARENT AND SCHOOL CONFLICT THROUGH EFFECTIVE COMMUNICATION

If conflict occurs between a parent and school personnel regarding the educational program of a special education student, mediation may provide a nonadversarial alternative to resolve the dispute.

Mediation is a structured, yet informal, voluntary process in which an impartial third party, a mediator, helps parents and school personnel who are experiencing conflict to reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and school personnel focus on their common interest—the student.

The Special Education Mediation Process Is:

Voluntary for parents and school personnel and is not required by law;

Confidential, thus encouraging all participants to speak freely;

A **No-Cost Service** to parents and schools provided by the Idaho State Department of Education (SDE); and

An **Alternative** that does not affect the status of a due process hearing or formal complaint.

Section 1. Mediation in Idaho

The mediation process:

1. May resolve disputes regarding the identification, evaluation, educational placement, or related services for students with disabilities;
2. Clarifies areas of agreement and disagreement; and
3. Fosters better relationships between parents and schools.

Section 2. Comparing Mediation to Other Systems

Mediation	Impartial Due Process Hearing	Complaint
Oral and written requests accepted	Only written requests with signature accepted (e-mail requests not acceptable)	Only written requests with signature accepted (e-mail requests not acceptable)
Less adversarial	Adversarial	Adversarial
Informal	Formal	Formal
Confidential	Confidential	Confidential
No cost to parties	Costly for schools/parents	Could be costly
Supports mutual problem-solving	Hearing officer orders solution	SDE investigator makes final determination
Takes less than a day Efforts made to complete entire process within 21 days	May take several days Decision must be issued within 45 days of the request unless the timeline is extended by the hearing officer	May take several weeks Investigation must be completed within 60 days with a final written report
Supports open, direct communication	Communication through attorneys and hearing officer	Communication with investigator
Agreements made jointly	Law-based solution	Any corrective actions determined by SDE
If unsuccessful, either party may pursue a complaint or hearing	Decision is binding, but may be appealed to state or federal court	Currently no formal appeal

Section 3. Requesting Mediation

An oral or a written request for mediation may be made to the SDE by the parent of a student with a disability, a legal guardian, a surrogate parent, or the district. In addition, the SDE will encourage parents and districts to participate in mediation when it seems appropriate. Following a request for mediation, the SDE will make every effort to complete the process within 21 days.

A request for mediation:

1. Is appropriate when parents and/or schools are unwilling or unable to modify their position without outside assistance;
2. May occur when parents and schools, after making a good-faith effort, face an impasse in attempting to resolve the conflict; and
3. Can be scheduled prior to, or concurrent with, a request for a due process hearing.

Section 4. Proposed Mediation by the SDE

The SDE will automatically offer mediation to resolve a dispute between parents and the district:

1. When there is a formal request for a due process hearing; and
2. At any other time the SDE deems the use of mediation appropriate.

Section 5. Appointment of a Mediator

The SDE maintains a list of qualified mediators. When both parties in a dispute agree to mediate, every attempt will be made by the SDE to appoint a mediator within 3 business days of the request. A mutually agreed upon time, date, and place of the mediation will be coordinated by the mediator.

If a due process hearing has been requested, the SDE will use a rotation list to select the mediator or both parties will be involved in and agree with the selection of the mediator.

If a due process hearing has been requested, the mediator may not be an employee of any district or state agency providing publicly funded services under the IDEA 2004 and co-mediators may not be used.

Section 6. The Mediator

A mediator is a neutral third party trained in communication, problem-solving and negotiation skills, and specific mediation techniques who acts as a facilitator to assist s and schools in resolving conflicts. The mediator:

1. Educates the parties about the mediation process.
2. Establishes the ground rules for all parties to follow.
3. Guides the process.
4. Encourages open and honest communication.
5. Ensures that each party is heard.
6. Rephrases information and summarizes issues.
7. Facilitates the writing of the agreement.

Section 7. Roles of Parents and Schools

It is in the best interest of all parties, including the student, to explore mediation as a means to an informal resolution of the conflict. Parents and school personnel play a very important role in mediation. As active participants, each party can help design a mutually agreeable solution.

Section 8. Prior to the Mediation

The SDE will provide:

1. Formal notification to the disputing parties of the mediator appointed.
2. A copy of *Special Education Mediation in Idaho* and the *Procedural Safeguards Notice* to each party.
3. A copy of the “Confidentiality Pledge” to the parent, district, and mediator. The parties should review the pledge, come to the mediation with any questions regarding confidentiality, and be prepared to sign the pledge.

The mediator will:

1. Contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation.

2. Assist in determining who will attend the mediation session and inform the parties that participants need to be knowledgeable about the student and of available resources or services the student may need.
3. Advise the SDE of the names of all parties who will participate in the mediation session.
4. The parent and district will:
5. Determine who will attend the mediation session and advise the mediator of their choices.
6. Advise the mediator that the individual(s) with authority to commit resources and make final resolution decisions will participate in the mediation session.

Section 9. Preparing for the Mediation Session

The following guidelines can help participants prepare for the mediation session:

1. Keep your schedule free and be willing to give at least one full day to the mediation process.
2. Put aside personality conflicts and center on the educational interests of the student.
3. Approach mediation in good faith.
4. Be open, honest, and willing to listen.
5. Be familiar with all documents related to the dispute, including the Individualized Education Program (IEP).
6. Organize your information and materials.
7. Set goals you would like to achieve during the session.
8. Be open to alternatives.

Section 10. The Mediation Session

Every mediator has his or her own personal style of conducting a mediation. Participants should feel free to ask questions and seek clarification on any issue during the session. The mediation may include the following stages:

1. **Introduction:** The mediator will explain the process, set the ground rules for all parties, respond to questions, and encourage the parties from the onset to deal with issues – not personalities.
2. **Identification of issues:** Each party will have an opportunity, without interruption, to identify issues and share information. The mediator may seek additional information or summarize the issues.
3. **Expression of interests:** At this stage, the mediator helps the parties identify their interests (those factors underlying their issues). Goals, needs, beliefs, hopes, and fears are expressed, explored, and clarified.
4. **Caucus:** On occasion, issues and underlying interests may not be clear. Opportunity is provided for each party to “caucus” with the mediator for the purpose of sharing information or seeking clarification about the issues. The mediator will not disclose information from caucus sessions without consent.
5. **Recess:** A break may be requested by any participant during the session. This time provides an excellent opportunity for all parties to gather their thoughts and absorb what has transpired.
6. **Creating alternatives:** After the basic issues and interests have been identified, discussed, and clearly understood by all parties, the mediator will assist the parties in identifying or developing options to resolve the conflict. At any time during an open session or in a caucus, either party may propose solutions.
7. **Developing and writing a plan:** The ultimate goal of mediation is to obtain a written resolution to the conflict. The parties establish the terms of the agreement. The mediator writes the final agreement, which is signed by the parent(s), school representatives, and mediator. Each party retains a copy of the agreement. If an agreement involves proposed changes to a student’s IEP, an IEP team meeting should be convened as soon as possible.
8. **Implementation:** For the final agreement to work effectively, its provisions must be implemented. The signed agreement demonstrates a commitment by both parties to abide by the conditions of the agreement. Ultimately, it is the responsibility of the parties to fulfill their obligations.

Section 11. Mediation Policies

1. Disputes involving weapons, drugs, or physical/sexual abuse are not acceptable cases for mediation.
2. No video or audio recording of the mediation proceedings will be made.
3. Each party must designate a person who has the authority to make final resolution decisions.
4. The district should have at least one representative present who has the authority to commit resources.
5. Because mediation is a nonadversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during a mediation session is strongly discouraged.
6. Except for the signed agreement, confidentiality pledge, and mediator evaluation forms, all notes or records taken during the proceedings will be collected and destroyed by the mediator at the conclusion of the mediation session.
7. The mediator will provide signed copies of the agreement to each party and the SDE.
8. The mediator will be excluded from subsequent actions—complaint investigations, due process hearings, and legal proceedings.
9. A due process hearing requested prior to mediation may be canceled by the requesting party.
10. If for any reason the mediation fails, the mediator will provide each party and the SDE with a statement certifying that the mediation was unsuccessful.
11. Either party has the option to make another request for mediation.

For additional information, contact:

Dispute Resolution Coordinator
State Department of Education
Bureau of Special Populations Services
P.O. Box 83720
Boise, Idaho 83720-0027
208/332-6912
800/432-4601
TT: 800/377-3529
FAX: 208/334-4664

Regional Special Education

North: 208/667-2588 Coeur d'Alene
208/885-9060 Moscow
Southeast: 208/282-3610 Pocatello
Southwest: 208/426-4315 Boise
208/426-4397 Boise

Comprehensive Advocacy, Inc. (Co-Ad)

4477 Emerald Street, Suite B-100
Boise, ID 83706
V/TT: 208/336-5353
V/TT: 800/632-5125

Idaho Parents Unlimited, Inc. (IPUL)

4696 Overland Road, Suite 478
Boise, ID 83705
800/242-IPUL
V/TT: 208/342-5884

IDAHO STATE DEPARTMENT OF EDUCATION
PROCEDURES FOR RESOLVING COMPLAINTS
UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Section 1. Filing Complaints

- A. Any individual or organization from Idaho or another state who believes a school district or other education agency has violated a requirement of Part B of the Individuals with Disabilities Education Improvement Act 2004 (IDEA 2004) may file a formal complaint with the State Department of Education (SDE). The complaint must:
1. Be in writing. Electronic mail is not acceptable. (The SDE will provide reasonable accommodations to individuals who need assistance in filing written complaints.)
 2. Be signed and dated.
 3. Include one or more allegations. Allegations are statements that an education agency has violated a requirement of Part B of the IDEA 2004. The alleged violations may not be older than one year from the date the complaint is received by the SDE. For unusual circumstances involving allegations older than one year, an extended period of time may be reasonable if:
 - a. The alleged violation is considered to be ongoing; or
 - b. There is a request for compensatory services for a violation that occurred not more than 3 years prior to the date of the complaint.
 4. Include the basis of each allegation. A basis includes the facts and/or a description of the events to support the allegation, including the name(s) of the student(s) involved, as appropriate.
- B. Complainants should also include their mailing addresses and work and home telephone numbers as well as the name, address, and telephone number of the student(s) involved.
- C. Complaints must be mailed to:
- Dispute Resolution Coordinator
State Department of Education
Bureau of Special Populations Services
P.O. Box 83720
Boise, ID 83720-0027

Section 2. Evaluating Complaints

At times, the SDE may not be able to proceed with resolution of all of a complainant's concerns. Complaints will be evaluated to determine whether the SDE can proceed with resolution.

- A. The SDE will notify the complainant, within 30 days of receipt of a complaint, if it cannot proceed with complaint resolution and the reasons. The complainant may subsequently file a new complaint. If this occurs, the 60-day timeline will begin upon receipt of the new complaint. Complaint resolution cannot proceed when:
1. The complaint is not in writing.
 2. The complaint is not signed.
 3. The complaint does not include allegations of Part B violations. (If appropriate, the SDE will notify the complainant of the appropriate agency, entity, or process to address his or her concerns.)
 4. The complaint does not include the basis for any of the allegations.
 5. All of the allegations in the complaint have been resolved in a previous due process hearing. However, the SDE will resolve a complaint alleging that the education agency failed to implement a due process hearing decision.
- B. The SDE will notify the complainant within 30 days of receipt of a complaint if it cannot proceed with resolution of certain statements and the reasons. The complainant may subsequently revise the complaint. If the revised complaint contains additional allegations on which the SDE can proceed, the SDE will modify the scope of complaint resolution and may extend the 60-day timeline. Resolution of every allegation cannot proceed when:
1. Some of the statements in the complaint are not allegations that an education agency has violated a requirement of Part B of the IDEA 2004. In this situation, the SDE will proceed with resolution of the statements that are allegations. Where appropriate, the SDE will assist the complainant in clarifying other statements and/or will inform the complainant of the appropriate agency, entity, or process to address concerns that do not allege violations of IDEA 2004.
 2. The basis is not provided for some of the allegations. In this situation, the SDE will proceed with resolution of the allegations for which a basis has been included. If appropriate, the SDE will assist the complainant in identifying the basis for his or her other allegations.
 3. Some or all of the allegations in the complaint are the subject of a current due process hearing. In this situation, the SDE will proceed with resolution of allegations that are not part of the due process hearing. The SDE will set aside allegations that are the

subject of a due process hearing and will suspend the timeline for those allegations. When the hearing is resolved, the SDE will proceed with resolution of any allegation on which the hearing officer has not ruled. However, the SDE will proceed to resolve allegations that an education agency failed to implement a due process hearing decision.

- C. If the complaint is withdrawn by the complainant prior to expiration of the timeline for resolution, the SDE will close the complaint.

Section 3. Complaint Resolution Processes

The SDE will make every effort to resolve complaints in the least adversarial manner possible. Resolution of a formal complaint may be achieved through one or more of the following four processes:

1. **Early complaint resolution (ECR):** The SDE may propose the use of ECR to resolve the complaint. This mutual approach provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular findings of fact and conclusions. The SDE Dispute Resolution Coordinator or a contracted investigator will facilitate a resolution through the development of a written agreement to be signed by both parties. If this process is not successful, the SDE will conduct a full investigation.
2. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The SDE may accept, reject, or negotiate the proposed CAP or require other corrective actions or timelines to ensure that the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the SDE will conduct a full investigation.
3. **Investigation:** If necessary, the SDE will investigate the complaint by conducting interviews and reviewing files, correspondence, and other information. An on-site investigation may occur if necessary.
4. **Verification of resolution:** At any time during an investigation, the education agency may submit information to the SDE to document that one or more of the allegations in the complaint have been resolved. The SDE may also receive similar information from other sources.

Section 4. Compliance Activities

The SDE will negotiate or require corrective actions, including timelines, as necessary, for the education agency to achieve compliance.

- A. **Remedies:** The SDE will identify the specific corrective action steps necessary for the district to achieve compliance. If it is determined that the district has failed to provide appropriate services, the SDE will address:
 - 1. How to remedy the denial of those services including, as appropriate, the award of compensatory education, monetary reimbursement, or other corrective actions appropriate to the needs of the student that is the subject of the complaint; and
 - 2. Appropriate future provision of services for all students with disabilities in the education agency.
- B. **Documentation:** The SDE will verify implementation of corrective actions and compliance by obtaining documentation from the education agency, confirming compliance with the complainant, or conducting an on-site follow up.
 - 1. **Technical assistance:** If necessary, the SDE will provide technical assistance to the education agency during or following complaint resolution. The SDE will maintain a record of technical assistance provided to education agencies.
 - 2. **Sanctions:** If the education agency fails to achieve compliance, the SDE may initiate procedures to withhold federal funds until the education agency achieves compliance.

Section 5. Complaint Resolution Steps

Within 60 days of receiving the complaint the SDE will:

- A. Notify the education agency against which the complaint has been filed. The notice will include the allegations, the basis for the allegations, and a copy of this complaint procedure.
- B. Suggest mediation to both parties as a method for resolving the complainant's concerns.
- C. Provide the complainant with a copy of this complaint procedure. The complainant will also be notified of his or her right to submit additional information, either orally or in writing. Complainants will be asked to submit additional written information within 15 days of receiving notice of the right to do so. The complainant may submit additional oral information through an interview with the complaint investigator.

- D. Gather sufficient additional information to make a determination for each allegation through informal fact finding; telephone or personal interviews; and a review of files, documents, correspondence, and other information. If both parties agree that one or more violations have occurred, additional fact-finding will not be conducted in those areas.
- E. Carry out an independent on-site investigation if it is determined necessary.
- F. Review all relevant information and make an independent determination for each allegation filed by the complainant as to whether the education agency has violated a requirement of Part B of the IDEA 2004.
- G. Issue a written decision to the complainant and education agency that contains:
 - 1. An introduction with:
 - a. The date the complaint was received by the SDE.
 - b. The name of the education agency involved.
 - c. The complainant's allegations.
 - d. The complaint investigator's name.
 - e. A list of the information gathered and reviewed, and the method of collection.
 - f. A description of the complainant's opportunities to submit additional information and whether additional information was submitted.
 - g. If relevant, a description of any extension of the 60-day timeline and the exceptional circumstances that warranted the extension.
 - 2. The SDE's findings of fact.
 - 3. The SDE's determination regarding each allegation.
 - 4. If the SDE determines the education agency violated a Part B requirement, required compliance activities will be stated in the report. A timeline and method of documenting compliance will be included.
 - 5. A reference number. Personally identifiable information about the student will not be included in the final report. The use of personally identifiable information about personnel employed by the education agency will be avoided.

- H. Notify the complainant and the education agency if the timeline is extended. The 60-day timeline, from date of receipt of the complaint to issuance of the report, may be extended if exceptional circumstances exist and are documented by the SDE. If the timeline is extended, the complainant and education agency will be notified in advance of the extension. The notification will include the length of the extension and a description of the exceptional circumstances that warrant the extension.

Section 6. Record of Complaints

Each complaint file will be maintained for a period of at least 5 years and will include an original or copy of:

1. The complaint.
2. The investigative notes, documents, correspondence, phone logs, etc.
3. The final report, or documentation that the complaint was withdrawn.
4. Verification of compliance if additional activities are required in the report.

DUE PROCESS HEARING REQUEST FORM*(for use by a parent/adult student)*

Please submit any request for a due process hearing to your district superintendent or the Dispute Resolution Coordinator, State Department of Education, Bureau of Special Populations Services, P.O. Box 83720, Boise, ID 83720-0027. (You may use this form or submit a letter that includes the information below.)

A. General Information: (type or print)

Date of Written Request: _____ Date Received (completed by SDE): _____

Name of Individual Requesting Hearing: _____

Address: _____

City: _____ Zip: _____ Day Phone: _____

Parent/Guardian of Student: _____

Address: _____

City: _____ Zip: _____ Telephone: (Hm) _____ (Wk) _____

Name of District/Agency Hearing Complaint Is Against: _____

Student Information:**District Information:**

Student Name: _____ District Contact: _____

Address: _____ Address: _____

City: _____ Zip: _____ City: _____ Zip: _____

Telephone: _____ Telephone: _____

School Student Attends: _____

(Complete if the information is available):

Student's Attorney: _____

(Complete if the information is available):

District's Attorney: _____

B. Issue(s): Describe your specific problem that relates to any matter of identification, evaluation, educational placement, or provision of a free appropriate public education. Summarize the facts and information as a basis for each allegation. (Attach additional pages if needed.)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

C. Resolution: Please provide your suggestions for solving the problem. (Attach additional pages if needed.)

[illegible]

Signature of Individual Requesting Hearing

Title or Relationship to Student

Date